HB 1311 [SCS HB 1311]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Prohibits any person who is in arrears for any unpaid city taxes or municipal-user fees from filing a declaration of intent to be a write-in candidate for election to any municipal office

AN ACT to repeal section 115.453, RSMo, and to enact in lieu thereof one new section relating to write-in candidates.

SECTION
A. Enacting clause.
115.453. Procedure for counting votes for candidates.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 115.453, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 115.453, to read as follows:

115.453. PROCEDURE FOR COUNTING VOTES FOR CANDIDATES. — Election judges shall count votes for all candidates in the following manner:

(1) No candidate shall be counted as voted for, except a candidate before whose name a cross (X) mark appears in the square preceding the name and a cross (X) mark does not appear in the square preceding the name of any candidate for the same office in another column. Except as provided in this subdivision and subdivision (2) of this section, each candidate with a cross (X) mark in the square preceding his or her name shall be counted as voted for.

(2) If cross (X) marks appear next to the names of more candidates for an office than are entitled to fill the office, no candidate for the office shall be counted as voted for. If more than one candidate is to be nominated or elected to an office, and any voter has voted for the same candidate more than once for the same office at the same election, no votes cast by the voter for the candidate shall be counted.

(3) No vote shall be counted for any candidate that is not marked substantially in accordance with the provisions of this section. The judges shall count votes marked substantially in accordance with this section and section 115.456 when the intent of the voter seems clear. Regulations promulgated by the secretary of state shall be used by the judges to determine voter intent. No ballot containing any proper votes shall be rejected for containing fewer marks than are authorized by law.

(4) Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate for election to office with the proper election authority, who shall then notify the proper filing officer of the write-in candidate prior to 5:00 p.m. on the second Friday immediately preceding the election day; except that, write-in votes shall be counted only for candidates for election to state or federal office who have filed a declaration of intent to be a write-in candidate for election to state or federal office with the secretary of state pursuant to section 115.353 prior to 5:00 p.m. on the second Friday immediately preceding the election day. No person who filed as a party or independent candidate for nomination or election to an office may, without withdrawing as provided by law, file as a write-in candidate for election to the same office for the same term. No candidate who files for nomination to an office and is not nominated at a primary election may file a declaration of intent to be a write-in candidate for the same office at the general election. When declarations are properly filed with the secretary of state, the secretary of state shall promptly transmit copies of all such declarations to the proper election authorities for further action pursuant to this section.

The election authority shall furnish a list to the election judges and counting teams prior to election day of all write-in candidates who have filed such declaration. This subdivision shall not apply to elections wherein candidates are being elected to an office for which no candidate has filed. **No person shall file a declaration of intent to be a write-in candidate for election to any municipal office unless such person is qualified to be certified as a candidate under section 115.346.**

(5) Write-in votes shall be cast and counted for a candidate without party designation. Write-in votes for a person cast with a party designation shall not be counted. Except for candidates for political party committees, no candidate shall be elected as a write-in candidate unless such candidate receives a separate plurality of the votes without party designation regardless of whether or not the total write-in votes for such candidate under all party and without party designations totals a majority of the votes cast.

(6) When submitted to the election authority, each declaration of intent to be a write-in candidate for the office of United States president shall include the name of a candidate for vice president and the name of nominees for presidential elector equal to the number to which the state is entitled. At least one qualified resident of each congressional district shall be nominated as presidential elector. Each such declaration of intent to be a write-in candidate shall be accompanied by a declaration of candidacy for each presidential elector in substantially the form set forth in subsection 3 of section 115.399. Each declaration of candidacy for the office of presidential elector shall be subscribed and sworn to by the candidate before the election official receiving the declaration of intent to be a write-in, notary public or other officer authorized by law to administer oaths.

Approved June 19, 2008

HB 1313 [HB 1313]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Gives a preference in all state purchasing contracts to certain disabled veterans doing business as Missouri companies when the quality of work is equal or better and the price is the same or less

AN ACT to amend chapter 34, RSMo, by adding thereto one new section relating to state purchasing.

SECTION
A. Enacting clause.
34.074. Disabled veterans, state and political subdivision contracts, preference to be given, when.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 34, RSMo, is amended by adding thereto one new section, to be known as section 34.074, to read as follows:

34.074. DISABLED VETERANS, STATE AND POLITICAL SUBDIVISION CONTRACTS, PREFERENCE TO BE GIVEN, WHEN. — 1. As used in this section, the term "service disabled veteran" means any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veterans' affairs.

2. As used in this section, the term "service disable veteran business" means a business concern:

(1) Not less than fifty-one percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than fifty-one percent of the stock of which is owned by one or more service-disabled veterans; and

(2) The management and daily business operations of which are controlled by one or more service-disabled veterans.

3. In letting contracts for the performance of any job or service, all agencies, departments, institutions, and other entities of this state and of each political subdivision of this state shall give preference to disabled veteran businesses doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less. The commissioner of administration may also give such preference whenever competing bids, in their entirety, are comparable.

4. In implementing the provisions of subsection 3 of this section, the following shall apply:

(1) The commissioner of administration shall have the goal of three percent of all such contracts described in subsection 3 of this section to be let to such veterans;

(2) If no such veterans doing business in this state meet the quality of performance and price standards required in subsection 3 of this section, such preference shall not be required.

Approved June 13, 2008

HB 1341 [HCS HB 1341]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Establishes Ethan's Law which requires the owner of a for-profit, privately owned swimming pool to maintain adequate liability insurance in the event of injury or death of a patron

AN ACT to amend chapter 316, RSMo, by adding thereto one new section relating to liability insurance of a for-profit private swimming pool or facility, with a penalty provision and an emergency clause.

SECTION
A. Enacting clause.
316.250. Ethan's Law — maintenance of adequate insurance required, when — definitions — violations, penalty.
B. Emergency clause

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 316, RSMo, is amended by adding thereto one new section, to be known as section 316.250, to read as follows:

316.250. ETHAN'S LAW — MAINTENANCE OF ADEQUATE INSURANCE REQUIRED, WHEN — DEFINITIONS — VIOLATIONS, PENALTY. — 1. This section shall be known and may be cited as "Ethan's Law".

2. Every owner of a for-profit private swimming pool or facility shall maintain adequate insurance coverage in an amount of not less than one million dollars per occurrence for any liability incurred in the event of injury or death of a patron to such swimming pool or facility, including any liability incurred under paragraph (b) of

subdivision (3) of section 537.348, RSMo. Such owners shall be required to register with the department of public safety and provide proof of such insurance coverage at the time of registration and when requested by any state or local governmental agency responsible for the enforcement of this section.

3. As used in this section, the following terms shall mean:

(1) "Owner", the owner of the land, including but not limited to a lessee, tenant, mortgagee in possession and the person in charge of the land on which a swimming pool is located;

(2) "Swimming pool or facility", any for-profit privately-owned tank or body of water with a capacity of less than five hundred patrons which charges a fee per admission and is used and maintained for swimming or bathing purposes which has a maximum depth of greater than twenty-four inches. Swimming pool or facility shall include, but not be limited to, a swimming pool on lands in connection with the operation of any type of for-profit privately-owned amusement or recreational park. Swimming pool or facility does not include a swimming pool or facility owned by a hotel, motel, public or governmental body, agency, or authority, a naturally occurring body of water or stream, or a body of water established by a person or persons and used for watering livestock, irrigation, or storm water management.

4. Any owner who violates the provisions of this section shall not be permitted to remain in operation until such owner meets the requirements of this section. Any such owner who allows operation of a swimming pool or facility in violation of this section shall be subject to a civil penalty of two hundred fifty dollars per day for each day of continued violation up to a maximum of ten thousand dollars and may be subject to liability for the costs incurred by the state or a political subdivision for enforcing the provisions of this section. In a separate court action, the attorney general may seek reimbursement on behalf of the state and a political subdivision may seek reimbursement on behalf of the political subdivision for costs incurred as a result of enforcing the provisions of this section. For purposes of this section, "each day of the violation" means each day that the swimming pool is operational and open for business and remains in violation of this section. It shall not include days that the swimming pool is not operational and open for business.

5. In addition, any owner who intentionally violates the provisions of this section is guilty of a class A misdemeanor. It shall be the duty of each prosecuting attorney and circuit attorney in their respective jurisdictions to commence any criminal actions under this section, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions throughout the state where such violations have occurred.

6. The department of public safety shall implement and, with the assistance of local law enforcement agencies, enforce the provisions of this section.

7. An insurance company providing insurance coverage under this section shall notify the department of public safety if any owner of a swimming pool or facility as defined in this section terminates, cancels, or fails to renew such coverage. The department may utilize local law enforcement agencies to enforce the provisions of this section.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to ensure public safety, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

Approved June 6, 2008

HB 1354 [HB 1354]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Exempts certain implements of husbandry used for spraying chemicals or spreading fertilizer for agricultural purposes from the motor vehicle titling, registration, and licensing requirements

AN ACT to amend chapter 301, RSMo, by adding thereto one new section relating to exempting certain types of vehicles from registration and licensing laws.

SECTION
A. Enacting clause.
301.029. Implements of husbandry, movement on highway permitted, when — definitions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 301, RSMo, is amended by adding thereto one new section, to be known as section 301.029, to read as follows:

301.029. IMPLEMENTS OF HUSBANDRY, MOVEMENT ON HIGHWAY PERMITTED, WHEN — DEFINITIONS. — 1. Any self-propelled sprayer, floater, or other form of implement of husbandry that is used for spraying chemicals or spreading fertilizer for agricultural purposes may be moved or operated on the highways of this state without complying with the provisions of this chapter relating to titling, registration, and the display of license plates.

2. The exemption for titling, registration, and the display of license plates provided for in subsection 1 of this section shall apply whether the described vehicles are laden or unladen.

3. All other requirements of the law relating to motor vehicles, unless the context clearly provides otherwise, shall apply to the vehicles described in subsection 1 of this section when operated on the highways of this state.

4. As used in this section, the term "implement of husbandry" means all self-propelled machinery manufactured for operation at low speeds, specifically designed for, or especially adapted to be capable of, incidental over-the-road and primary off-road usage and used exclusively for the application of commercial plant food materials or agricultural chemicals.

Approved June 19, 2008

HB 1368 [HB 1368]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Clarifies requirements for membership on the Northwest Missouri State University Board of Regents

AN ACT to repeal section 174.332, RSMo, and to enact in lieu thereof one new section relating to Northwest Missouri State University.

SECTION
A. Enacting clause.
174.332. Northwest Missouri State University, board of regents, members, terms, appointment of, quorum requirements.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 174.332, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 174.332, to read as follows:

174.332. NORTHWEST MISSOURI STATE UNIVERSITY, BOARD OF REGENTS, MEMBERS, TERMS, APPOINTMENT OF, QUORUM REQUIREMENTS. — 1. Notwithstanding the provisions of section 174.050 to the contrary, the board of regents of Northwest Missouri State University shall be composed of nine members, **[**six of whom shall reside in the district in which the university is situated with at least one member of the board being a resident of Nodaway County and two additional members selected from any of the seven college districts as contained in section 174.010, provided that no more than one member be appointed from the same congressional district, one of which shall serve a term of three years and one of which shall serve a term of six years. All subsequent members appointed shall serve a term of six years pursuant to the provisions of section 174.070**] eight of whom shall be voting members and one who shall be a nonvoting member. Not more than four voting members shall belong to any one political party. The appointed members of the board serving on August 28, 2008, shall continue to serve until the expiration of the terms for which the appointed members were appointed and until such time a successor is duly appointed**.

2. The board of regents shall be appointed as follows:

(1) Six voting members shall be residents of the university's historic statutory service region, as described in section 174.010 and modified by section 174.250, provided at least one member shall be a resident of Nodaway County;

(2) Two voting members shall be residents of a county in the state that is outside the university's historic statutory service region, as described in section 174.010 and modified by section 174.250, provided these two members shall not be appointed from the same congressional district; and

(3) One nonvoting member shall be a full-time student of the university, a United States citizen, and a resident of Missouri.

3. A majority of the voting members of the board shall constitute a quorum for the transaction of business; however, no appropriation of money nor any contract that shall require any appropriation or disbursement of money shall be made, nor teacher employed or dismissed, unless a majority of the voting members of the board vote for the same.

4. Except as specifically provided in this section, the appointments and terms of office for the voting and nonvoting members of the board, and all other duties and responsibilities of the board, shall comply with the provisions of state law regarding boards of regents.

Approved June 25, 2008

HB 1380 [HCS HB 1380]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Authorizes allocation of property taxes collected from the Senior Citizens' Services Fund tax to senior centers for their operational and capital needs

AN ACT to repeal section 67.993, RSMo, and to enact in lieu thereof one new section relating to senior citizens' services.

SECTION
A. Enacting clause.
67.993. Fund established, when — board of directors, appointment, members, terms, vacancies, officers — duties — use of fund moneys — powers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 67.993, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 67.993, to read as follows:

67.993. FUND ESTABLISHED, WHEN — BOARD OF DIRECTORS, APPOINTMENT, MEMBERS, TERMS, VACANCIES, OFFICERS — DUTIES — USE OF FUND MONEYS — POWERS. — 1. Upon the approval of the tax authorized by section 67.990 by the voters of the county or city not within a county, the tax so approved shall be imposed upon all taxable property within the county or city and the proceeds therefrom shall be deposited in a special fund, to be known as the "Senior Citizens' Services Fund", which is hereby established within the county or city treasury. No moneys in the senior citizens' services fund shall be spent until the board of directors provided for in subsection 2 of this section has been appointed and has taken office.

2. Upon approval of the tax authorized by section 67.990 by the voters of the county or city, the governing body of the county or the mayor of the city shall appoint a board of directors consisting of seven directors, who shall be selected from the county or city at large and shall, as nearly as practicable, represent the various groups to be served by the board. Each director shall be a resident of the county or city. Each director shall be appointed to serve for a term of four years and until his successor is duly appointed and qualified; except that, of the directors first appointed, one director shall be appointed for a term of one year, two directors shall be appointed for a term of two years, two directors shall be appointed for a term of three years, and two directors shall be appointed for a term of four years. Directors may be reappointed. All vacancies on the board of directors shall be filled for the remainder of the unexpired term by the governing body of the county or mayor of the city. The directors shall not receive any compensation for their services, but may be reimbursed for all actual and necessary expenses incurred in the performance of their official duties from the moneys in the senior citizens' services fund.

3. The administrative control and management of the funds in the senior citizens' services fund and all programs to be funded therefrom shall rest solely with the board of directors appointed under subsection 2 of this section; except that, the budget for the senior citizens' services fund shall be approved by the governing body of the county or city prior to making of any payments from the fund in any fiscal year. The board of directors shall use the funds in the senior citizens' services fund to provide programs which will improve the health, nutrition, and quality of life of persons who are sixty years of age or older. **The budget may allocate funds for operational and capital needs to senior-related programs in the county or city in which such property taxes are collected.** No funds in the senior citizens' services fund may be used, directly or indirectly, for any political purpose. In providing such services, the board of directors may contract with any person to provide services relating, in whole or in part, to the services which the board itself may provide under this section, and for such purpose may expend the tax proceeds derived from the tax authorized by section 67.990.

4. The board of directors shall elect a chairman, vice chairman, and such other officers as it deems necessary; shall establish eligibility requirements for the programs it furnishes; and shall do all other things necessary to carry out the purposes of sections 67.990 to 67.995. A majority of the board of directors shall constitute a quorum.

5. The board of directors, with the approval of the governing body of the county or city, may accept any gift of property or money for the use and benefit of the persons to be served through the programs established and funded under sections 67.990 to 67.995, and may sell or exchange any such property so long as such sale or exchange is in the best interests of the programs provided under sections 67.990 to 67.995 and the proceeds from such sale or exchange are used exclusively to fund such programs.

Approved June 13, 2008

HB 1384 [SS SCS HB 1384 & HB 2157]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding identity protection and gives identity theft victims the right to have an incident report filed by their law enforcement agency and receive a copy of the report

AN ACT to amend chapters 407 and 570, RSMo, by adding thereto six new sections relating to identity protection, with penalty provisions.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapters 407 and 570, RSMo, is amended by adding thereto six new sections, to be known as sections 407.1380, 407.1382, 407.1384, 407.1385, 570.222, and 570.380, to read as follows:

407.1380. DEFINITIONS. — As used in sections 407.1380 to 407.1384, the following terms shall mean:

(1) "Account review", activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) "Consumer", any individual;

(3) "Consumer credit reporting agency", any entity that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties. The term "consumer credit reporting agency" shall not include an entity that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer credit reporting agency and who does not maintain a permanent database of credit information from which consumer reports are produced and who does not furnish consumer reports to third parties;

(4) "Credit report", any written or electronic communication of any information by a consumer credit reporting agency that in any way bears upon a person's credit worthiness, credit capacity, or credit standing;

(5) "Security freeze", a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer credit reporting agency from releasing the consumer's credit report or score relating to the extension of credit without the express authorization of the consumer.

407.1382. SECURITY FREEZE MAY BE REQUESTED, WHEN — FEE — AGENCY DUTIES — FURNISHING A CREDIT REPORT AFTER FREEZE PROHIBITED, EXCEPTIONS — LIFTING OF FREEZE, WHEN — PERMANENT REMOVAL, WHEN — FEE — NOTICE. — 1. A consumer may request that a consumer credit reporting agency place a security freeze on that consumer's credit report, if that request is made:

(1) In writing, where delivery by standard U.S. Postal Service mail service shall be sufficient; or

(2) By other reliable means, including, but not limited to, Internet, telephone, facsimile, or other electronic means if any such other means are provided by the consumer credit reporting agency; and

(3) Proper identification is presented to adequately identify the requestor as the consumer subject to the credit report.

2. A consumer credit reporting agency shall honor a consumer's request for a security freeze within five business days of receipt of such request. A consumer credit reporting agency may assess a fee of up to five dollars for the first request by a consumer to place a security freeze, and up to ten dollars for any subsequent request to place a security freeze made by the same consumer, except that at no time shall a fee be assessed for a request to place a security freeze if the request is accompanied by an incident report as defined under section 570.222, RSMo.

3. A consumer credit reporting agency shall, within ten business days of placing a security freeze on the consumer's credit report, send the consumer:

(1) Written confirmation of compliance with the consumer's request;

(2) Instructions explaining the process of placing, temporarily lifting, or permanently removing a security freeze and the process for allowing access to information from the consumer's credit report for a specific requestor or period of time;

(3) A unique personal identification number or password to be used by the consumer to temporarily lift or permanently remove the security freeze or designate a specific requestor for receipt of the credit report despite the security freeze.

4. A consumer credit reporting agency shall not furnish a credit report to any person if the consumer who is subject to the credit report has requested a security freeze be placed on that report unless the credit report:

(1) Is requested by the consumer who is subject to the report;

(2) Is furnished under a court order;

(3) Is furnished during a period in which the consumer has temporarily lifted the freeze;

(4) Is requested for the purposes of prescreening as provided by the Fair Credit Reporting Act under 15 U.S.C. 1681, et seq.;

(5) Is requested by a child support enforcement agency;

(6) Is requested for use in setting or adjusting a rate, underwriting, adjusting a claim, or servicing a policy for insurance purposes;

(7) Is requested by a specific person, or the subsidiary, affiliate, agent, or assignee of such person, whom the consumer has identified as eligible for receipt of the credit report under subsection 6 of this section, despite the consumer's request for a security freeze;

(8) Is furnished to a person, or the subsidiary, affiliate, agent, or assignee of such person, with whom the consumer has a debtor-creditor relationship for the purpose of account review or collecting the financial obligation owing for the account contract or debt;

(9) Is requested by the state or its agents or assigns for the purpose of investigating fraud or investigating or collecting delinquent taxes to the extent consistent with a permissible purpose under 15 U.S.C. 1681; or

(10) Is requested by a person or entity administering a credit file monitoring service or similar service to which the consumer has subscribed.

5. If a security freeze is in place, a consumer credit reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

6. A consumer may request that the consumer credit reporting agency temporarily lift a security freeze for a specific requestor or period of time despite the consumer request for a security freeze under subsection 1 of this section, if that request is made:

(1) In writing, where delivery by standard U.S. Postal Service mail service shall be sufficient; or

(2) By other reliable means, including, but not limited to, Internet, telephone, facsimile, or other electronic means if any such other means are provided by the consumer credit reporting agency; and

(3) Proper identification is presented to adequately identify the requestor as the consumer subject to the credit report, which shall include the unique personal identification number or password issued to the consumer under subsection 3 of this section; and

(4) The time period is specified for which the freeze shall be temporarily lifted.

7. (1) A consumer credit reporting agency shall temporarily lift a security freeze within fifteen minutes of receiving such a request from a consumer, if that request is received during normal business hours and is made in accordance with subdivisions (2), (3), and (4) of subsection 6 of this section. If such a lift request is received outside of normal business hours, the consumer credit reporting agency shall lift the security freeze within fifteen minutes of the start of the next normal business day.

(2) A consumer credit reporting agency shall temporarily lift a security freeze within three days of receiving such a request from a consumer, if that request is made in accordance with subdivisions (1), (3), and (4) of subsection 6 of this section.

(3) The time frame in which a consumer credit reporting agency shall comply with a request to lift a security freeze under this subsection may be extended in the event of an act of God, an unauthorized or illegal act by a third party, operational interruption due to electrical failure or hardware or software failure, government action, or reasonable unexpected maintenance of the agency's systems, provided that the lifting of a security freeze shall occur within a reasonable time after resumption of normal business operations.

8. A consumer credit reporting agency shall permanently remove a security freeze within three days of receiving such a request from a consumer, if that request is made:

(1) In writing, where delivery by standard U.S. Postal Service mail service shall be sufficient; or

(2) By reliable means, including, but not limited to, Internet, telephone, facsimile, or other electronic means if any such other means are provided by the consumer credit reporting agency; and

(3) Proper identification is presented to adequately identify the requestor as the consumer subject to the credit report, which shall include the unique personal identification number or password issued to the consumer under subsection 3 of this section.

9. A consumer credit reporting agency may assess a fee of up to five dollars to temporarily lift a security freeze, except that at no time shall a fee be assessed for a request to temporarily lift a security freeze that was placed in conjunction with an incident report under subsection 2 of this section. No fee shall be assessed for a request to permanently remove a security freeze.

10. At any time a consumer is required to receive a summary of rights under 15 U.S.C. Section 1681g(d), the following notice shall be included:

"Missouri Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer credit reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by mail or via other approved methods. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time after the freeze is in place. To provide that authorization you must contact the consumer credit reporting agency and provide all of the following:

(1) The personal identification number or password;

(2) Proper identification to verify your identity;

(3) The proper information regarding the period of time for which the report shall be available.

A consumer credit reporting agency must authorize the release of your credit report no later than fifteen minutes after receiving the above information, under certain circumstances.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer credit reporting agency, who improperly obtains access to a file, knowingly misuses file data, or fails to correct inaccurate file data.".

407.1384. AGENCY LIABILITY FOR FAILURE TO COMPLY, DAMAGES AND EQUITABLE RELIEF. — 1. Any consumer credit reporting agency that knowingly fails to comply with the provisions of sections 407.1380 to 407.1384 shall be liable to the consumer who is subject to the credit report in an amount equal to:

(1) Any actual damages sustained by the consumer due to such failure; and

(2) Any court costs and fees assessed in maintaining the action, as well as reasonable attorney's fees.

2. In addition to the foregoing monetary sums, a court, upon request of the damaged consumer, shall award such equitable relief as may be necessary to restore the damaged consumer's credit and to discourage future violations of sections 407.1380 to 407.1384 by the consumer credit reporting agency.

407.1385. PROCESSING OF APPLICATIONS FOR CREDIT — EFFECT OF SECURITY FREEZE. — It shall not be considered a violation of any law that requires an application for credit to be processed within a specified time frame if a creditor is unable to meet this time frame because of inability to access a credit report due to a security freeze.

570.222. IDENTITY THEFT — RIGHTS OF VICTIMS — DEFINITION — INCIDENT REPORTS, DISCRETION OF LAW ENFORCEMENT NOT AFFECTED. — 1. Notwithstanding that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, victims of identity theft have the right to contact the local law enforcement agency where the victim is domiciled and request that an incident report about the identity theft be prepared and filed. The victim may also request from the local law enforcement agency to receive a copy of the incident report. The law enforcement agency may share the incident report with law enforcement agencies located in other jurisdictions.

2. As used in this section "incident report" means a loss or other similar report prepared and filed by a local law enforcement agency.

3. Nothing in this section shall interfere with the discretion of a local law enforcement agency to allocate resources for investigations of crimes or to provide an incident report as permitted in this section. An incident report prepared and filed under this section shall not be an open case for purposes of compiling open case statistics.

570.380. MANUFACTURE OR POSSESSION OF FIVE OR MORE FAKE IDS PROHIBITED, PENALTY. — Any person who manufactures or possesses five or more fictitious or forged means of identification, as defined in section 570.223, with the intent to distribute to others for the purpose of committing a crime shall be guilty of a class C felony.

Approved June 30, 2008

HB 1419 [HB 1419]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding the licensing of massage therapists

AN ACT to repeal section 324.265, RSMo, and to enact in lieu thereof one new section relating to massage therapy.

SECTION

A. Enacting clause.

324.265. Massage therapists, qualifications of applicants — waiver, when — licensure term, renewal — student license, when — provisional license, when — exemptions — exemptions for certain therapists licensed in other jurisdictions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 324.265, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 324.265, to read as follows:

324.265. MASSAGE THERAPISTS, QUALIFICATIONS OF APPLICANTS — WAIVER, WHEN — LICENSURE TERM, RENEWAL — STUDENT LICENSE, WHEN — PROVISIONAL LICENSE, WHEN — EXEMPTIONS — EXEMPTIONS FOR CERTAIN THERAPISTS LICENSED IN OTHER JURISDICTIONS. — 1. A person desiring a license to practice massage therapy shall be at least eighteen years of age, **shall be of good moral character,** shall pay the appropriate required application fee, and shall submit satisfactory evidence to the board of meeting at least one of the following requirements:

(1) Has passed a statistically valid examination on therapeutic massage and body work which is approved by the board, prior to August 28, 1999, and applies for such license by December 31, 2000; or

(2) **[**Completing**] Has completed a program of** massage therapy studies**, as defined by the board,** consisting of at least five hundred hours of supervised instruction and subsequently passing an examination approved by the board. The examination may consist of school examinations. The **program and** course of instruction shall be approved by the board.

(a) The five hundred hours **of supervised instruction** shall consist of three hundred hours dedicated to massage theory and practice techniques, one hundred hours dedicated to the study of anatomy and physiology, fifty hours dedicated to business practice, professional ethics, hygiene and massage law in the state of Missouri, and fifty hours dedicated to ancillary therapies, including cardiopulmonary resuscitation (CPR) and first aid**[**; or

(3) Has completed five hundred hours in an apprenticeship with a certified mentor and has successfully passed an examination approved by the board; or

(4) Has been licensed or registered as a massage therapist in another state, territory or commonwealth or the District of Columbia, which maintains standards of practice and licensure which substantially conform to the requirements in force in this state;

(5) Has been engaged in the practice of massage therapy for at least ten years prior to August 28, 1999, and applies for such license by December 31, 2000; or

(6) Has been in the practice of massage therapy for at least three years prior to August 28, 1999, has completed at least one hundred hours of formal training in massage approved by the board and applies for such license by December 31, 2000**]**.

(b) A person completing a massage therapy program comprised of less than five hundred hours of supervised instruction may submit an application for licensure and the board shall establish requirements for the applicant to complete the requirements of paragraph (a) of subdivision (2) of this subsection.

2. A person who has practiced less than three years or has less than one hundred hours of training may request a waiver of the requirements of subsection 1 of this section and apply for a temporary two-year license which shall not be renewable. By the end of such two-year period, such person shall complete at least one hundred additional hours of formal training, including at least twenty-five hours in anatomy and physiology, in a school approved by the board. Such person shall have until December 31, 2000, to apply for a temporary license pursuant to this subsection.

3. Each license issued pursuant to the provisions of this section shall expire on its renewal date. The board shall renew any license upon:

(1) Application for renewal;

(2) Proof, as provided by rule, that the therapist has completed twelve hours of continuing education; and

(3) Payment of the appropriate renewal fee.

Failure to obtain the required continuing education hours, submit satisfactory evidence, or maintain required documentation is a violation of this subsection. As provided by rule, the board

may waive or extend the time requirements for completion of continuing education for reasons related to health, military service, foreign residency, or other good cause. All requests for waivers or extensions of time shall be made in writing and submitted to the board before the renewal date.

4. An applicant who possesses the qualifications specified in subsection 2 of this section to take the examination approved by the board may be granted a provisional license to engage in the practice of massage therapy **[**until the date of the next examination, and thereafter until the results of the examination are known**]**. **An applicant for a provisional license shall submit proof that the applicant has applied for the examination approved by the board. A provisional license shall be valid for one year from the date of issuance and shall be deemed void upon its expiration date. A provisional licensee is prohibited from practicing massage therapy after expiration of the provisional license.**

5. As determined by the board, students making substantial progress toward completion of their training in an approved curriculum shall be granted a student license for the purpose of practicing massage therapy on the public while under the supervision of a massage therapy instructor.

6. **[**A provisional license may, at the discretion of the board, be renewed once, and**]** A student license may be renewed until the student completes such student's training. **Upon request, the board may extend a provisional license for good cause at the discretion of the board. An application for the extension of a provisional license shall be submitted to the board prior to the expiration of the provisional license.**

7. The following practitioners are exempt from the provisions of this section upon filing written proof with the board that they meet one or more of the following:

(1) Persons who act under a Missouri state license, registration, or certification and perform soft tissue manipulation within their scope of practice;

(2) Persons who restrict their manipulation of the soft tissues of the human body to the hands, feet or ears;

(3) Persons who use touch and words to deepen awareness of existing patterns of movement in the human body as well as to suggest new possibilities of movement;

(4) Persons who manipulate the human body above the neck, below the elbow, and below the knee and do not disrobe the client in performing such manipulation.

8. Any nonresident person licensed, registered, or certified by another state or territory of the United States, the District of Columbia, or foreign territory or recognized certification system determined as acceptable by the board shall be exempt from licensure as defined in this chapter, if such persons are incidentally called into the state to teach a course related to massage or body work therapy or to provide massage therapy services as part of an emergency response team working in conjunction with disaster relief officials.

9. Any nonresident person holding a current license, registration, or certification in massage therapy from another state or recognized national certification system determined as acceptable by the board shall be exempt from licensure as defined in this chapter when temporarily present in this state for the purpose of providing massage therapy services at special events such as conventions, sporting events, educational field trips, conferences, and traveling shows or exhibitions.

Approved June 25, 2008

HB 1422 [SCS HB 1422]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Authorizes the Highways and Transportation Commission to implement and administer a state plan to conform with the federal Unified Carrier Registration Act of 2005

AN ACT to repeal sections 390.071 and 622.095, RSMo, and to enact in lieu thereof one new section relating to implementing the unified carrier registration plan and agreement to conform with the Unified Carrier Registration Act of 2005.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 390.071 and 622.095, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 390.021, to read as follows:

390.021. UCR AGREEMENT — DEFINITIONS — COMMISSION AUTHORITY — PRECEDENCE OF AGREEMENT — FILING OF FORMS AND REGISTRATION FEE-ENFORCEMENT AUTHORITY — AUTHORIZED EXEMPTIONS. — 1. The provisions of this section shall be applicable, notwithstanding any provisions of section 390.030 to the contrary.

2. As used in chapter 622, RSMo, and in this section, except when the context clearly requires otherwise, the following terms shall mean:

(1) "UCR implementing regulations", includes the regulations issued by the United States Secretary of Transportation under 49 U.S.C.A. Section 13908, the rules and regulations issued by the board of directors of the Unified Carrier Registration (UCR) plan under 49 U.S.C.A. Section 14504a, and the administrative rules adopted by the state highways and transportation commission under this section;

(2) "Unified Carrier Registration Act", or "UCR Act", Sections 4301 to 4308 of the Unified Carrier Registration Act of 2005, within subtitle C of title IV of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users" or "SAFETEA-LU", Public Law 109-59 (119 Stat. 1761), as those sections have been and periodically may be amended.

3. Except when the context clearly requires otherwise, the definitions of words in 49 U.S.C. Sections 13102, 13908, and 14504a shall apply to and determine the meaning of those words as used in this section.

4. In carrying out and being subject to the provisions of the UCR Act, the Unified Carrier Registration (UCR) agreement, the UCR implementing regulations, and this section, but notwithstanding any other provisions of law to the contrary, the state highways and transportation commission may:

(1) Submit to the proper federal authorities, amend and carry out a state plan to qualify as a base-state and to participate in the UCR plan and administer the UCR agreement, and take other necessary actions as the designated representative of the state of Missouri so that:

(a) Missouri domiciled entities who must register and pay UCR registration fees are not required to register and pay those fees in a base-state other than the state of Missouri;

(b) The state of Missouri does not forfeit UCR registration fee revenues; and

(c) The state of Missouri may maintain its eligibility to receive the maximum allowable allocations of revenues derived under the UCR agreement;

(2) Administer the UCR registration of Missouri domiciled motor carriers, motor private carriers, brokers, freight forwarders and leasing companies, and such persons domiciled in non-participating states who have designated this state as their base-state under the UCR Act;

(3) Receive, collect, process, deposit, transfer, distribute, and refund UCR registration fees relating to any of the persons and activities described in this section. Notwithstanding any provisions of law to the contrary, these UCR registration fees collected by the commission are hereby designated as "nonstate funds" within the meaning of section 15, article IV, Constitution of Missouri, and the commission shall transmit these funds to the state department of revenue for deposit to the credit of the state highways and transportation department fund. The commission shall, from time to time, direct the payment of, and the director of revenue shall pay, the fees so deposited, in accordance with the provisions of the UCR Act, the UCR agreement, and the UCR implementing regulations. The director of revenue shall credit all income derived from the investment of these funds to the state highways and transportation department fund;

(4) Exercise all other powers, duties, and functions the UCR Act requires of or allows a participating state or base-state;

(5) Promulgate administrative rules and issue specific orders relating to any of the persons and activities described in this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void;

(6) Enter into agreements with any agencies or officers of the United States, or of any state that participates or intends to enter into the UCR agreement; and

(7) Delegate any or all of the powers, duties, and functions of the commission under this section to any agent or contractor.

5. After the commission has entered into the UCR plan on behalf of this state, the requirements in the UCR agreement shall take precedence over any conflicting requirements under chapter 622, RSMo, or this chapter.

6. Notwithstanding any other provisions of law to the contrary, every motor carrier, motor private carrier, broker, freight forwarder, and leasing company that has its principal place of business within this state, and every such person who has designated this state as the person's base-state under the provisions of the UCR Act, shall timely complete and file with the state highways and transportation commission all the forms required by the UCR agreement and the UCR implementing regulations, and shall pay the required UCR registration fees to the commission.

7. All powers of the commission under section 226.008, RSMo, are hereby made applicable to the enforcement of this section with reference to any person subject to any provision of this section. The chief counsel shall not be required to exhaust any administrative remedies before commencing any enforcement actions under this section. The provisions of chapter 622, RSMo, shall apply to and govern the practice and procedures before the courts in those actions.

8. Except as required by the UCR Act, the UCR agreement, or the UCR implementing regulations, the provisions of this section and the rules adopted by the commission under this section shall not be construed as exempting any motor carrier, or any person controlled by a motor carrier, from any of the requirements of chapter 622, RSMo, or this chapter, relating to the transportation of passengers or property in intrastate commerce.

9. Notwithstanding any other provision of this section to the contrary, Missouri elects to not apply the provisions of the UCR Act, the UCR Agreement, and the UCR implementing regulations to motor carriers and motor private carriers that operate solely in intrastate commerce transporting farm or dairy products, including livestock, from a farm, or property from farm to farm, or stocker and feeder livestock from farm to farm, or from market to farm.

[390.071. MOTOR CARRIERS INTERSTATE PERMITS, WHEN ISSUED. — 1. No person shall engage in the business of a motor carrier in interstate commerce on any public highway in this state unless there is in force with respect to such carrier a permit issued by the division of motor carrier and railroad safety authorizing such operations.

2. Upon application to the division in writing, containing such information as the division may by rule require, accompanied by a copy of applicant's certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, the filing of such liability insurance policy or bond and other formal documents as the division shall by rule require, the division, if it finds applicant qualified, shall, with or without hearing, issue a permit authorizing the proposed interstate operations.]

[622.095. DIVISION AUTHORIZED TO CONTRACT WITH OTHER JURISDICTIONS — UNIFORM ADMINISTRATION OF CERTAIN INTERSTATE VEHICLES — POWERS — BASE STATE REGISTRATION FUND ESTABLISHED — PROPERLY REGISTERED VEHICLE OPERATION ALLOWED — FEES MAY BE STAGGERED AND PRORATED. — 1. In addition to its other powers, the state highways and transportation commission may negotiate and enter into fair and equitable cooperative agreements or contracts with other states, the District of Columbia, territories and possessions of the United States, foreign countries, and any of their officials, agents or instrumentalities, to promote cooperative action and mutual assistance between the participating jurisdictions with regard to the uniform administration and registration, through a single base jurisdiction for each registrant, of Federal Motor Carrier Safety Administration operating authority and exempt operations by motor vehicles operated in interstate commerce. Notwithstanding any other provision of law to the contrary, and in accordance with the provisions of such agreements or contracts between participating jurisdictions, the commission may:

(1) Delegate to other participating jurisdictions the authority and responsibility to collect and pay over statutory registration, administration or license fees; to receive, approve and maintain the required proof of public liability insurance coverage; to receive, process, maintain and transmit registration information and documentation; to issue evidence of proper registration in lieu of certificates, licenses, or permits which the commission may issue motor vehicle licenses or identifiers in lieu of regulatory licenses under section 390.136, RSMo; and to suspend or revoke any credential, approval, registration, certificate, permit, license, or identifier referred to in this section, as agents on behalf of the commission with regard to motor vehicle operations by persons having a base jurisdiction other than this state;

(2) Assume the authority and responsibility on behalf of other jurisdictions participating in such agreements or contracts to collect and direct the department of revenue to pay over to the appropriate jurisdictions statutory registration, administration or license fees, and to perform all other activities described in subdivision (1) of this subsection, on its own behalf or as an agent

on behalf of other participating jurisdictions, with regard to motor vehicle operations in interstate commerce by persons having this state as their base jurisdiction;

(3) Establish or modify dates for the payment of fees and the issuance of annual motor vehicle licenses or identifiers in conformity with such agreements or contracts, notwithstanding any provisions of section 390.136, RSMo, to the contrary; and

(4) Modify, cancel or terminate any of the agreements or contracts.

2. Notwithstanding the provisions of section 390.136, RSMo, statutory registration, administration or license fees collected by the commission on behalf of other jurisdictions under such agreements or contracts are hereby designated as "nonstate funds" within the meaning of section 15, article IV, Constitution of Missouri, and shall be immediately transmitted to the department of revenue of the state for deposit to the credit of a special fund which is hereby created and designated as the "Base State Registration Fund". The commission shall direct the payment of, and the director of revenue shall pay, the fees so collected to the appropriate other jurisdictions. All income derived from the investment of the base state registration fund by the director of revenue shall be credited to the state highways and transportation department fund.

3. "Base jurisdiction", as used in this section, means the jurisdiction participating in such agreements or contracts where the registrant has its principal place of business.

4. Every person who has properly registered his or her interstate operating authority or exempt operations with his or her base jurisdiction and maintains such registration in force in accordance with such agreements or contracts is authorized to operate in interstate commerce within this state any motor vehicle which is accompanied by a valid annual license or identifier issued by his base jurisdiction in accordance with such agreements or contracts, notwithstanding any provision of section 390.071, 390.126 or 390.136, RSMo, or rules of the commission to the contrary.

5. Notwithstanding any provision of law to the contrary, the commission may stagger and prorate the payment and collection of license fees pursuant to this section for the purposes of:

(1) Coordinating the issuance of regulatory licenses under this section with the issuance of other motor carrier credentials; and

(2) Complying with any federal law or regulation.]

Approved June 19, 2008

HB 1426 [HB 1426]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Removes the requirement that the Missouri Public Service Commission prepare an annual economic impact report on certificates of public convenience and necessity for certain telecommunication companies

AN ACT to repeal section 392.410, RSMo, and to enact in lieu thereof one new section relating to the public service commission.

SECTION

A. Enacting clause.

392.410. Certificate of public convenience and necessity required, exception — certificate of interexchange service authority, required when — duration of certificates — temporary certificates, issued when — political subdivisions restricted from providing certain telecommunications services or facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 392.410, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.410, to read as follows:

392.410. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED, EXCEPTION — CERTIFICATE OF INTEREXCHANGE SERVICE AUTHORITY, REQUIRED WHEN — DURATION OF CERTIFICATES — TEMPORARY CERTIFICATES, ISSUED WHEN — POLITICAL SUBDIVISIONS RESTRICTED FROM PROVIDING CERTAIN TELECOMMUNICATIONS SERVICES OR FACILITIES. — 1. A telecommunications company not possessing a certificate of public convenience and necessity from the commission at the time this section goes into effect shall have not more than ninety days in which to apply for a certificate of service authority from the commission pursuant to this chapter unless a company holds a state charter issued in or prior to the year 1913 which charter authorizes a company to engage in the telephone business. No telecommunications company not exempt from this subsection shall transact any business in this state until it shall have obtained a certificate of service authority from the commission pursuant to the provisions of this chapter, except that any telecommunications company which is providing telecommunications service on September 28, 1987, and which has not been granted or denied a certificate of public convenience and necessity prior to September 28, 1987, may continue to provide that service exempt from all other requirements of this chapter until a certificate of service authority is granted or denied by the commission so long as the telecommunications company applies for a certificate of service authority within ninety days from September 28, 1987.

2. No telecommunications company offering or providing, or seeking to offer or provide, any interexchange telecommunications service shall do so until it has applied for and received a certificate of interexchange service authority pursuant to the provisions of subsection 1 of this section. No telecommunications company offering or providing, or seeking to offer or provide, any local exchange telecommunications service shall do so until it has applied for and received a certificate of local exchange service authority pursuant to the provisions of section 392.420.

3. No certificate of service authority issued by the commission shall be construed as granting a monopoly or exclusive privilege, immunity or franchise. The issuance of a certificate of service authority to any telecommunications company shall not preclude the commission from issuing additional certificates of service authority to another telecommunications company providing the same or equivalent service or serving the same geographical area or customers as any previously certified company, except to the extent otherwise provided by section 392.450.

4. Any certificate of public convenience and necessity granted by the commission to a telecommunications company prior to September 28, 1987, shall remain in full force and effect unless modified by the commission, and such companies need not apply for a certificate of service authority in order to continue offering or providing service to the extent authorized in such certificate of public convenience and necessity. Any such carrier, however, prior to substantially altering the nature or scope of services provided under a certificate of public convenience and necessity, or adding or expanding services beyond the authority contained in such certificate, shall apply for a certificate of service authority for such alterations or additions pursuant to the provisions of this section.

5. The commission may review and modify the terms of any certificate of public convenience and necessity issued to a telecommunications company prior to September 28, 1987, in order to ensure its conformity with the requirements and policies of this chapter. Any certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected. Unless exercised within a period of one year from the issuance thereof, authority conferred by a certificate of service authority or a certificate of public convenience and necessity shall be null and void.

6. The commission may issue a temporary certificate which shall remain in force not to exceed one year to assure maintenance of adequate service or to serve particular customers, without notice and hearing, pending the determination of an application for a certificate.

7. No political subdivision of this state shall provide or offer for sale, either to the public or to a telecommunications provider, a telecommunications service or telecommunications facility used to provide a telecommunications service for which a certificate of service authority is required pursuant to this section. Nothing in this subsection shall be construed to restrict a political subdivision from allowing the nondiscriminatory use of its rights-of-way including its poles, conduits, ducts and similar support structures by telecommunications providers or from providing to telecommunications providers, within the geographic area in which it lawfully operates as a municipal utility, telecommunications services or telecommunications facilities on a nondiscriminatory, competitively neutral basis, and at a price which covers cost, including imputed costs that the political subdivision would incur if it were a for-profit business. Nothing in this subsection shall restrict a political subdivision from providing telecommunications services or facilities:

(1) For its own use;

(2) For 911, E-911 or other emergency services;

(3) For medical or educational purposes;

(4) To students by an educational institution; or

(5) Internet-type services.

[8. The public service commission shall annually study the economic impact of the provisions of this section and prepare and submit a report to the general assembly by December thirty-first of each year.**]**

Approved June 19, 2008

HB 1450 [SCS HB 1450]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Extends the expiration date for the Joint Committee on Terrorism, Bioterrorism, and Homeland Security and the provisions regarding the Open Records and Meetings Law

AN ACT to repeal sections 21.800 and 610.021, RSMo, and to enact in lieu thereof two new sections relating to terrorism.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 21.800 and 610.021, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 21.800 and 610.021, to read as follows:

21.800. JOINT COMMITTEE ON TERRORISM, BIOTERRORISM, AND HOMELAND SECURITY ESTABLISHED, MEMBERS, DUTIES, MEETINGS, EXPENSES, REPORT — EXPIRES, WHEN. — 1.

There is established a joint committee of the general assembly to be known as the "Joint Committee on Terrorism, Bioterrorism, and Homeland Security" to be composed of seven members of the senate and seven members of the house of representatives. The senate members of the joint committee shall be appointed by the president pro tem and minority floor leader of the senate and the house members shall be appointed by the speaker and minority floor leader of the house of representatives. The appointment of each member shall continue during the member's term of office as a member of the general assembly or until a successor has been appointed to fill the member's place when his or her term of office as a member of the general assembly has expired. No party shall be represented by more than four members from the house of representatives nor more than four members from the senate. A majority of the committee shall constitute a quorum, but the concurrence of a majority of the members shall be required for the determination of any matter within the committee's duties.

2. The joint committee shall:

(1) Make a continuing study and analysis of all state government terrorism, bioterrorism, and homeland security efforts;

(2) Devise a standard reporting system to obtain data on each state government agency that will provide information on each agency's terrorism and bioterrorism preparedness, and homeland security status at least biennially;

(3) Determine from its study and analysis the need for changes in statutory law; and

(4) Make any other recommendation to the general assembly necessary to provide adequate terrorism and bioterrorism protections, and homeland security to the citizens of the state of Missouri.

3. The joint committee shall meet within thirty days after its creation and organize by selecting a chairperson and a vice chairperson, one of whom shall be a member of the senate and the other a member of the house of representatives. The chairperson shall alternate between members of the house and senate every two years after the committee's organization.

4. The committee shall meet at least quarterly. The committee may meet at locations other than Jefferson City when the committee deems it necessary.

5. The committee shall be staffed by legislative personnel as is deemed necessary to assist the committee in the performance of its duties.

6. The members of the committee shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties.

7. It shall be the duty of the committee to compile a full report of its activities for submission to the general assembly. The report shall be submitted not later than the fifteenth of January of each year in which the general assembly convenes in regular session and shall include any recommendations which the committee may have for legislative action as well as any recommendations for administrative or procedural changes in the internal management or organization of state or local government agencies and departments. Copies of the report containing such recommendations shall be sent to the appropriate directors of state or local government agencies or departments included in the report.

8. The provisions of this section shall expire on December 31, **[**2007**]** **2009**.

610.021. CLOSED MEETINGS AND CLOSED RECORDS AUTHORIZED WHEN, EXCEPTIONS, SUNSET DATES FOR CERTAIN EXCEPTIONS. — Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any

insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate;

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

(4) The state militia or national guard or any part thereof;

(5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;

(6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

(8) Welfare cases of identifiable individuals;

(9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;

(10) Software codes for electronic data processing and documentation thereof;

(11) Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;

(12) Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;

(13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such, and the names of private sources donating or contributing money to the salary of a chancellor or president at all public colleges and universities in the state of Missouri and the amount of money contributed by the source;

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

(16) Records relating to municipal hotlines established for the reporting of abuse and wrongdoing;

(17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records pursuant to this chapter;

(18) Operational guidelines and policies developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Nothing in this exception shall be deemed to close information regarding expenditures, purchases, or contracts made by an agency in implementing these guidelines or policies. When seeking to close information pursuant to this exception, the agency shall affirmatively state in writing that disclosure would impair its ability to protect the safety or health of persons, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records. This exception shall sunset on December 31, **[**2008**]** **2012**;

(19) Existing or proposed security systems and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a nonpublic entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety:

(a) Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open;

(b) When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;

(c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the receiving agency within ninety days of submission to determine if retention of the document is necessary in furtherance of a state security interest. If retention is not necessary, the documents shall be returned to the nonpublic governmental body or destroyed;

(d) This exception shall sunset on December 31, **[**2008**]** **2012**;

(20) Records that identify the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of a public governmental body. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file or database containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, or telecommunications network shall be open; and

(21) Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body.

Approved June 10, 2008

HB 1469 [HB 1469]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding certain appeals to the Administrative Hearing Commission

AN ACT to repeal sections 621.250 and 640.013, RSMo, and to enact in lieu thereof two new sections relating to the administrative hearing commission.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 621.250 and 640.013, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 621.250 and 640.013, to read as follows:

621.250. APPEALS FROM DECISIONS OF CERTAIN ENVIRONMENTAL COMMISSIONS TO BE HEARD BY ADMINISTRATIVE HEARING COMMISSION — PROCEDURE. — 1. All authority to hear appeals granted in chapters 260, 444, 640, 643, and 644, RSMo, and to the hazardous waste management commission in chapter 260, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in chapter 640, RSMo, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall be transferred to the administrative hearing commission under this chapter. The authority to render final decisions after hearing on appeals heard by the administrative hearing commission shall remain with the commissions listed in this subsection. **The commissions listed in this subsection may render final decisions after hearing or through stipulation, consent order, agreed settlement or by disposition in the nature of default judgment, judgment on the pleadings, or summary determination, consistent with the rules and procedures of the administrative hearing commission.**

2. Except as otherwise provided by law, any person or entity who is a party to, or who is affected by, any finding, order, decision, or assessment for which the authority to hear appeals was transferred to the administrative hearing commission in subsection 1 of this section **[**shall be entitled to a hearing before the administrative hearing commission by the filing of a petition**]** **may file a notice of appeal** with the administrative hearing commission within thirty days after any such finding, order, decision, or assessment is placed in the United States mail or within thirty days of any such finding, order, decision, or assessment being delivered, whichever is earlier. **The administrative hearing commission may hold hearings or may make recommended decisions based on stipulation of the parties, consent order, agreed settlement or by disposition in the nature of default judgment, judgment on the pleadings, or summary determination, in accordance with the rules and procedures of the administrative hearing commission.**

3. Any decision by the director of the department of natural resources that may be appealed to the commissions listed in subsection 1 of **this** section **[**621.052**]** and shall contain a notice of the right of appeal in substantially the following language: "If you were adversely affected by this decision, you may appeal to have the matter heard by the administrative hearing commission. To appeal, you must file a petition with the administrative hearing commission within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier.

If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the administrative hearing commission.". Within fifteen days after the administrative hearing commission renders its recommended decision, it shall transmit the record and a transcript of the proceedings, together with the administrative hearing commission's recommended decision to the commission having authority to issue a final decision. The decision of the commission shall be based only on the facts and evidence in the hearing record. The commission may adopt the recommended decision as its final decision. The commission may change a finding of fact or conclusion of law made by the administrative hearing commission, or may vacate or modify the recommended decision issued by the administrative hearing commission, only if the commission states in writing the specific reason for a change made under this subsection.

4. In the event the person filing the appeal prevails in any dispute under this section, interest shall be allowed upon any amount found to have been wrongfully collected or erroneously paid at the rate established by the director of the department of revenue under section 32.065, RSMo.

5. Appropriations shall be made from the respective funds of the various commissions to cover the administrative hearing commission's costs associated with these appeals.

6. In all matters heard by the administrative hearing commission under this section, the burden of proof shall comply with section 640.012, RSMo. The hearings shall be conducted by the administrative hearing commission in accordance with the provisions of chapter 536, RSMo, and its regulations promulgated thereunder.

640.013. APPEALS FROM CERTAIN ENVIRONMENTAL DECISIONS TO BE HEARD BY ADMINISTRATIVE HEARING COMMISSION. — **[**All authority to hear appeals granted in this chapter and chapters 260, 444, 643, and 644, RSMo, and to the hazardous waste management commission in chapter 260, RSMo, the land reclamation commission in chapter 444, RSMo, the safe drinking water commission in this chapter, the air conservation commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo, shall be transferred to the administrative hearing commission under chapter 621, RSMo. The authority to render final decisions after hearing on appeals heard by the administrative hearing commission shall remain with the commissions listed in this subsection.**] The administrative hearing commission shall have the authority to hear certain environmental appeals in accordance with section 621.250, RSMo.**

Approved June 19, 2008

HB 1549 [CCS SS HCS HBs 1549, 1771, 1395 & 2366]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding illegal aliens and immigration status verification

AN ACT to repeal sections 8.283, 302.720, and 544.470, RSMo, and to enact in lieu thereof twenty-four new sections relating to illegal aliens, with penalty provisions, and an effective date for certain sections.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 8.283, 302.720, and 544.470, RSMo, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 43.032, 67.307, 208.009, 285.309, 285.500, 285.503, 285.506, 285.512, 285.515, 285.525, 285.530, 285.535, 285.540, 285.543, 285.550, 285.555, 292.675, 302.063, 302.720, 544.470, 577.722, 577.900, 578.570, and 650.681, to read as follows:

43.032. FEDERAL IMMIGRATION LAW ENFORCEMENT, PATROL MEMBERS TO BE DESIGNATED FOR TRAINING. — Subject to appropriation, the superintendent of the Missouri state highway patrol shall designate that some or all members of the highway patrol be trained in accordance with a memorandum of understanding between the state of Missouri and the United States Department of Homeland Security concerning the enforcement of federal immigration laws during the course of their normal duties in the state of Missouri, in accordance with 8 U.S.C. Section 1357(g). The superintendent shall have the authority to negotiate the terms of such memorandum. The memorandum shall be signed by the superintendent of the highway patrol, the governor, and the director of the department of public safety.

67.307. SANCTUARY POLICIES FOR MUNICIPALITIES PROHIBITED — DEFINITIONS — DUTY OF LAW ENFORCEMENT TO COOPERATE IN IMMIGRATION ENFORCEMENT. — 1. As used in this section, the following terms mean:

(1) "Law enforcement officer", a sheriff or peace officer of a municipality with the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of municipalities;

(2) "Municipality", any county, city, town, or village;

(3) "Municipality official", any elected or appointed official or any law enforcement officer serving the municipality;

(4) "Sanctuary policy", any municipality's order or ordinance, enacted or followed that:

(a) Limits or prohibits any municipality official or person employed by the municipality from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien within such municipality; or

(b) Grants to illegal aliens the right to lawful presence or status within the municipality in violation of federal law.

2. No municipality shall enact or adopt any sanctuary policy. Any municipality that enacts or adopts a sanctuary policy shall be ineligible for any moneys provided through grants administered by any state agency or department until the sanctuary policy is repealed or is no longer in effect. Upon the complaint of any state resident regarding a specific government entity, agency, or political subdivision of this state or prior to the provision of funds or awarding of any grants to a government entity, agency, or political subdivision of this state, any member of the general assembly may request that the attorney general of the state of Missouri issue an opinion stating whether the government entity, agency, or political subdivision has current policies in contravention of this section.

3. The governing body, sheriff, or chief of police of each municipality shall provide each law enforcement officer with written notice of their duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration.

4. This section shall become effective on January 1, 2009.

208.009. ILLEGAL ALIENS PROHIBITED FROM RECEIVING ANY STATE OR LOCAL PUBLIC BENEFIT — PROOF OF LAWFUL RESIDENCE REQUIRED — TEMPORARY BENEFITS PERMITTED, WHEN — EXCEPTIONS FOR NONPROFIT ORGANIZATIONS. — 1. No alien unlawfully present in the United States shall receive any state or local public benefit, except for state or local public benefits that may be offered under 8 U.S.C. 1621(b). Nothing in this section shall be construed to prohibit the rendering of emergency medical care, prenatal care, services offering alternatives to abortion, emergency assistance, or legal assistance to any person.

2. As used in this section, "public benefit" means any grant, contract, or loan provided by an agency of state or local government; or any retirement, welfare, health, postsecondary education, state grants and scholarships, disability, housing, or food assistance benefit under which payments, assistance, credits, or reduced rates or fees are provided. The term "public benefit" shall not include unemployment benefits payable under chapter 288, RSMo. The unemployment compensation program shall verify the lawful presence of an alien for the purpose of determining eligibility for benefits in accordance with its own procedures.

3. In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an applicant who is eighteen years of age or older shall provide affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States, provided, however, that in the case of state grants and scholarships, such proof shall be provided before the applicant receives any state grant or scholarship. Such affirmative proof shall include documentary evidence recognized by the department of revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States. In processing applications for public benefits, an employee of an agency of state or local government shall not inquire about the legal status of a custodial parent or

guardian applying for a public benefit on behalf of his or her dependent child who is a citizen or permanent resident of the United States.

4. An applicant who cannot provide the proof required under this section at the time of application may alternatively sign an affidavit under oath, attesting to either United States citizenship or classification by the United States as an alien lawfully admitted for permanent residence, in order to receive temporary benefits or a temporary identification document as provided in this section. The affidavit shall be on or consistent with forms prepared by the state or local government agency administering the state or local public benefits and shall include the applicant's Social Security number or any applicable federal identification number and an explanation of the penalties under state law for obtaining public assistance benefits fraudulently.

5. An applicant who has provided the sworn affidavit required under subsection 4 of this section is eligible to receive temporary public benefits as follows:

(1) For ninety days or until such time that it is determined that the applicant is not lawfully present in the United States, whichever is earlier; or

(2) Indefinitely if the applicant provides a copy of a completed application for a birth certificate that is pending in Missouri or some other state. An extension granted under this subsection shall terminate upon the applicant's receipt of a birth certificate or a determination that a birth certificate does not exist because the applicant is not a United States citizen.

6. An applicant who is an alien shall not receive any state or local public benefit unless the alien's lawful presence in the United States is first verified by the federal government. State and local agencies administering public benefits in this state shall cooperate with the United States Department of Homeland Security in achieving verification of an alien's lawful presence in the United States in furtherance of this section. The system utilized may include the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security.

7. The provisions of this section shall not be construed to require any nonprofit organization organized under the Internal Revenue Code to enforce the provisions of this section, nor does it prohibit such an organization from providing aid.

8. Any agency that administers public benefits shall provide assistance in obtaining appropriate documentation to persons applying for public benefits who sign the affidavit required by subsection 4 of this section stating they are eligible for such benefits but lack the documents required under subsection 3 of this section.

285.309. FEDERAL 1099 FORMS, CERTAIN EMPLOYERS REQUIRED TO SUBMIT TO DEPARTMENT — FINE FOR FAILURE TO REPORT. — 1. Every employer doing business in this state who employs five or more employees shall, if applicable, submit federal 1099 miscellaneous forms to the department of revenue. Such forms shall be submitted to the department of revenue within the time lines established for the filing of Missouri form 99 forms.

2. Any employer who intentionally, on five or more occasions, fails to submit information required under subsection 1 of this section shall be fined not more than two hundred dollars for each time the employer fails to submit the information on or after the fifth occurrence.

285.500. DEFINITIONS. — For the purposes of sections 285.500 to 285.515 the following terms mean:

(1) "Employee", any individual who performs services for an employer that would indicate an employer-employee relationship in satisfaction of the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296.;

(2) "Employer", any individual, organization, partnership, political subdivision, corporation, or other legal entity which has or had in the entity's employ five or more individuals performing public works as defined in section 290.210, RSMo;

(3) "Knowingly", a person acts knowingly or with knowledge,

(a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or

(b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

285.503. MISCLASSIFICATION OF WORKERS BY EMPLOYERS, FAILURE TO CLAIM WORKER AS EMPLOYEE — ATTORNEY GENERAL MAY INVESTIGATE, POWERS. — 1. An employer knowingly misclassifies a worker if that employer fails to claim the worker as an employee but knows that the worker is an employee.

2. The attorney general may investigate alleged or suspected violations of sections 285.500 to 285.515 and shall have all powers provided by sections 407.040 to 407.090, RSMo, in connection with any investigation of an alleged or suspected violation of sections 285.500 to 285.515 as if the acts enumerated in sections 285.500 to 285.515 are unlawful acts proscribed by chapter 407, RSMo. The attorney general may serve and enforce subpoenas related to the enforcement of sections 285.500 to 285.515.

285.506. STATE TO HAVE BURDEN OF PROOF. — In any action brought under sections 285.500 to 285.515, the state shall have the burden of proving that the employer misclassified the worker.

285.512. ATTORNEY GENERAL MAY SEEK INJUNCTION, WHEN. — Whenever the attorney general has reason to believe that an employer is engaging in any conduct that would be a violation of sections 285.500 to 285.515, the attorney general may seek an injunction prohibiting the employer from engaging in such conduct. The attorney general may bring an action for injunctive relief in the circuit court of any county where the alleged violation is occurring or about to occur.

285.515. PENALTIES FOR VIOLATIONS. — If a court determines that an employer has knowingly misclassified a worker, the court shall enter a judgment in favor of the state and award penalties in the amount of fifty dollars per day per misclassified worker up to a maximum of fifty thousand dollars. The attorney general may enter into a consent judgment with any person alleged to have violated sections 285.500 to 285.515.

285.525. DEFINITIONS. — As used in sections 285.525 to 285.550, the following terms shall have the following meanings:

(1) "Business entity", any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "business entity" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "business entity" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "business entity" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo;

(2) "Contractor", a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for

valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity;

(3) "Employee", any person performing work or service of any kind or character for hire within the state of Missouri;

(4) "Employer", any person or entity employing any person for hire within the state of Missouri, including a public employer. Where there are two or more putative employers, any person or entity taking a business tax deduction for the employee in question shall be considered an employer of that person for purposes of sections 285.525 to 285.550;

(5) "Employment", the act of employing or state of being employed, engaged, or hired to perform work or service of any kind or character within the state of Missouri;

(6) "Federal work authorization program", any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L.99-603;

(7) "Knowingly", a person acts knowingly or with knowledge,

(a) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or

(b) With respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result;

(8) "Political subdivision", any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied;

(9) "Public employer", every department, agency, or instrumentality of the state or political subdivision of the state;

(10) "Unauthorized alien", an alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3);

(11) "Work", any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

285.530. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED — FEDERAL WORK AUTHORIZATION PROGRAM, REQUIREMENTS FOR PARTICIPATION IN — LIABILITY OF CONTRACTORS AND SUBCONTRACTORS. — 1. No business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

2. As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Every such business entity shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

3. All public employers shall enroll and actively participate in a federal work authorization program.

4. An employer may enroll and participate in a federal work authorization program and shall verify the employment eligibility of every employee in the employer's hire whose

employment commences after the employer enrolls in a federal work authorization program. The employer shall retain a copy of the dated verification report received from the federal government. Any business entity that participates in such program shall have an affirmative defense that such business entity has not violated subsection 1 of this section.

5. A general contractor or subcontractor of any tier shall not be liable under sections 285.525 to 285.550 when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of this section, if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of this section and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

285.535. ATTORNEY GENERAL TO ENFORCE — ACTION TO BE INITIATED, WHEN — COMPLAINT PROCEDURES — VERIFICATION OF STATUS REQUIRED — VIOLATIONS, CORRECTIVE ACTIONS, PENALTIES. — 1. The attorney general shall enforce the requirements of sections 285.525 to 285.550.

2. An enforcement action shall be initiated by means of a written, signed complaint under penalty of perjury as defined in section 575.040, RSMo, to the attorney general submitted by any state official, business entity, or state resident. A valid complaint shall include an allegation which describes the alleged violator as well as the actions constituting the violation, and the date and location where such actions occurred. A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

3. Upon receipt of a valid complaint, the attorney general shall, within fifteen business days, request identity information from the business entity regarding any persons alleged to be unauthorized aliens. Such request shall be made by certified mail. The attorney general shall direct the applicable municipal or county governing body to suspend any applicable license, permit, or exemptions of any business entity which fails, within fifteen business days after receipt of the request, to provide such information.

4. The attorney general, after receiving the requested identity information from the business entity, shall submit identity data required by the federal government to verify, under 8 U.S.C. 1373, the immigration status of such persons, and shall provide the business entity with written notice of the results of the verification request:

(1) If the federal government notifies the attorney general that an employee is authorized to work in the United States, the attorney general shall take no further action on the complaint;

(2) If the federal government notifies the attorney general that an employee is not authorized to work in the United States, the attorney general shall proceed on the complaint as provided in subsection 5 of this section;

(3) If the federal government notifies the attorney general that it is unable to verify whether an employee is authorized to work in the United States, the attorney general shall take no further action on the complaint until a verification from the federal government concerning the status of the individual is received. At no point shall any state official attempt to make an independent determination of any alien's legal status without verification from the federal government.

5. (1) If the federal government notifies the attorney general that an employee is not authorized to work in the United States, and the employer of the unauthorized alien participates in a federal work authorization program, there shall be a rebuttable presumption that the employer has met the requirements for an affirmative defense under

subsection 4 of section 285.530, and the employer shall comply with subsection 6 of this section.

(2) If the federal government notifies the attorney general that an employee is not authorized to work in the United States, the attorney general shall bring a civil action in Cole County if the attorney general reasonably believes the business entity knowingly violated subsection 1 of section 285.530.

(a) If the court finds that a business entity did not knowingly violate subsection 1 of section 285.530, the employer shall have fifteen business days to comply with subdivision (1) and paragraph (a) of subdivision (2) of subsection 6 of this section. If the entity fails to do so, the court shall direct the applicable municipal or county governing body to suspend the business permit, if such exists, and any applicable licenses or exemptions of the entity until the entity complies with subsection 6 of this section;

(b) If the court finds that a business entity knowingly violated subsection 1 of section 285.530, the court shall direct the applicable municipal or county governing body to suspend the business permit, if such exists, and any applicable licenses or exemptions of such business entity for fourteen days. Permits, licenses, and exemptions shall be reinstated for entities who comply with subsection 6 of this section at the end of the fourteen day period.

6. The correction of a violation with respect to the employment of an unauthorized alien shall include the following actions:

(1) (a) The business entity terminates the unauthorized alien's employment. If the business entity attempts to terminate the unauthorized alien's employment and such termination is challenged in a court of the state of Missouri, the fifteen-business-day period for providing information to the attorney general referenced in subsection 3 of this section shall be tolled while the business entity pursues the termination of the unauthorized alien's employment in such forum; or

(b) The business entity, after acquiring additional information from the employee, requests a secondary or additional verification by the federal government of the employee's authorization, under the procedures of a federal work authorization program. While this verification is pending, the fifteen-business-day period for providing information to the attorney general referenced in subsection 3 of this section shall be tolled; and

(2) A legal representative of the business entity submits, at an office designated by the attorney general, the following:

(a) A sworn affidavit stating that the violation has ended that shall include a description of the specific measures and actions taken by the business entity to end the violation, and the name, address, and other adequate identifying information for any unauthorized aliens related to the complaint; and

(b) Documentation acceptable to the attorney general which confirms that the business entity has enrolled in and is participating in a federal work authorization program.

7. The suspension of a business license or licenses under subsection 5 of this section shall terminate one business day after a legal representative of the business entity submits the affidavit and other documentation required under subsection 6 of this section following any period of restriction required under subsection 5 of this section.

8. For an entity that violates subsection 1 of section 285.530 for a second time, the court shall direct the applicable municipal or county governing body to suspend, for one year, the business permit, if such exists, and any applicable license or exemptions of the business entity. For a subsequent violation, the court shall direct the applicable municipal or county governing body to forever suspend the business permit, if such exists, and any applicable license or exemptions of the business entity.

9. In addition to the penalties in subsections 5 and 8 of this section:

(1) Upon the first violation of subsection 1 of section 285.530 by any business entity awarded a state contract or grant or receiving a state-administered tax credit, tax abatement, or loan from the state, the business entity shall be deemed in breach of contract and the state may terminate the contract and suspend or debar the business entity from doing business with the state for a period of three years. Upon such termination, the state may withhold up to twenty-five percent of the total amount due to the business entity;

(2) Upon a second or subsequent violation of subsection 1 of section 285.530 by any business entity awarded a state contract or grant or receiving a state-administered tax credit, tax abatement, or loan from the state, the business entity shall be deemed in breach of contract and the state may terminate the contract and permanently suspend or debar the business entity from doing business with the state. Upon such termination, the state may withhold up to twenty-five percent of the total amount due to the business entity.

10. Sections 285.525 to 285.550 shall not be construed to deny any procedural mechanisms or legal defenses included in a federal work authorization program.

11. Any business entity subject to a complaint and subsequent enforcement under sections 285.525 to 285.540, or any employee of such a business entity, may challenge the enforcement of this section with respect to such entity or employee in the courts of the state of Missouri.

12. If the court finds that any complaint is frivolous in nature or finds no probable cause to believe that there has been a violation, the court shall dismiss the case. For purposes of this subsection, "frivolous" shall mean a complaint not shown by clear and convincing evidence to be valid. Any person who submits a frivolous complaint shall be liable for actual, compensatory, and punitive damages to the alleged violator for holding the alleged violator before the public in a false light. If the court finds that a complaint is frivolous or that there is not probable cause to believe there has been a violation, the attorney general shall issue a public report to the complainant and the alleged violator stating with particularity its reasons for dismissal of the complaint. Upon such issuance, the complaint and all materials relating to the complaint shall be a public record as defined in chapter 610, RSMo.

13. The determination of whether a worker is an unauthorized alien shall be made by the federal government. A determination of such status of an individual by the federal government shall create a rebuttable presumption as to that individual's status in any judicial proceedings brought under this section or section 285.530. The court may take judicial notice of any verification of an individual's status previously provided by the federal government and may request the federal government to provide automated or testimonial verification.

14. Compensation, whether in money or in kind or in services, knowingly provided to any unauthorized alien shall not be allowed as a business expense deduction from any income or business taxes of this state.

15. Any business entity which terminates an employee in accordance with this section shall not be liable for any claims made against the business entity under chapter 213, RSMo, for the termination.

285.540. RULEMAKING AUTHORITY. — The attorney general shall promulgate rules to implement the provisions of sections 285.525 to 285.550. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of

rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

285.543. DATABASE TO BE MAINTAINED. — The attorney general shall maintain a database that documents any business entity whose permit, license, or exemption has been suspended or state contract has been terminated.

285.550. FAILURE TO SUSPEND A BUSINESS PERMIT, CITY OR COUNTY DEEMED TO HAVE ADOPTED A SANCTUARY POLICY. — If any municipal or county governing body fails to suspend the business permit, if such exists, and applicable licenses or exemptions as directed by the attorney general as a result of a violation of section 285.530 or 285.535 within fifteen days after notification by the attorney general, the municipality shall be deemed to have adopted a sanctuary policy as defined in section 67.307, RSMo, and shall be subject to the penalties thereunder.

285.555. DISCONTINUANCE OF FEDERAL WORK AUTHORIZATION PROGRAM, EFFECT OF. — Should the federal government discontinue or fail to authorize or implement any federal work authorization program, the general assembly shall review sections 285.525 to 285.555 for the purpose of determining whether the sections are no longer applicable and should be repealed.

292.675. DEFINITIONS — ON-SITE TRAINING REQUIRED — WORKERS TO MAINTAIN DOCUMENTATION OF COMPLETION OF TRAINING — RESOLUTION OR ORDINANCE REQUIRED — VIOLATIONS, PENALTY — RULEMAKING AUTHORITY. — 1. As used in this section, the following terms shall mean:

(1) "Construction", construction, reconstruction, demolition, painting and decorating, or major repair;

(2) "Department", the department of labor and industrial relations;

(3) "Person", any natural person, joint venture, partnership, corporation, or other business or legal entity;

(4) "Public body", the state of Missouri or any officer, official, authority, board or commission of the state, or other political subdivision thereof, or any institution supported in whole or in part by public funds;

(5) "Public works", all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds. "Public works" includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by said utility.

2. Any person signing a contract to work on the construction of public works for any public body shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work on such construction project.

3. Any employee found on a worksite subject to this section without documentation of the successful completion of the course required under subsection 2 of this section shall be afforded twenty days to produce such documentation before being subject to removal from the project.

4. The public body shall specify the requirements of this section in the resolution or ordinance and in the call for bids for the contract. The contractor to whom the contract

is awarded and any subcontractor under such contractor shall require all on-site employees to complete the ten-hour training program required under subsection 2 of this section. The public body awarding the contract shall include this requirement in the contract. The contractor shall forfeit as a penalty to the public body on whose behalf the contract is made or awarded, two thousand five hundred dollars plus one hundred dollars for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period in subsections 2 and 3 of this section have elapsed. The public body awarding the contract shall include notice of these penalties in the contract. The public body awarding the contract shall withhold and retain therefrom, all sums and amounts due and owing as a result of any violation of this section when making payments to the contractor under the contract. The contractor may withhold from any subcontractor, sufficient sums to cover any penalties the public body has withheld from the contractor resulting from the subcontractor's failure to comply with the terms of this section. If the payment has been made to the subcontractor without withholding, the contractor may recover the amount of the penalty resulting from the fault of the subcontractor in an action maintained in the circuit court in the county in which the public works project is located from the subcontractor.

5. In determining whether a violation of this section has occurred, and whether the penalty under subsection 4 of this section shall be imposed, the department shall investigate any claim of violation. Upon completing such investigation, the department shall notify the public body and any party found to be in violation of this section of its findings and whether a penalty shall be assessed. Determinations under this section may be appealed in the circuit court in the county in which the public works project is located.

6. If the contractor or subcontractor fails to pay the penalty within forty-five days following notification by the department, the department shall pursue an enforcement action to enforce the monetary penalty provisions of subsection 4 of this section against the contractor or subcontractor found to be in violation of this section. If the court orders payment of the penalties as prescribed under subsection 4 of this section, the department shall be entitled to recover its actual cost of enforcement in addition to such penalty amount.

7. The department may establish rules and regulations for the purpose of implementing the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

8. This section shall not apply to work performed by public utilities which are under the jurisdiction of the public service commission, or their contractors, or work performed at or on facilities owned or operated by said public utilities.

9. The provisions of this section shall not apply to rail grade crossing improvement projects where there exists a signed agreement between the railroad and the Missouri department of transportation or an order issued by the department of transportation ordering such construction.

10. This section shall take effect on August 28, 2009.

302.063. NO ISSUANCE OF A DRIVERS LICENSE TO ILLEGAL ALIENS OR PERSONS WHO CAN NOT PROVE LAWFUL PRESENCE. — The department of revenue shall not issue any

driver's license to an illegal alien nor to any person who cannot prove his or her lawful presence pursuant to the provisions of this chapter and the regulations promulgated thereunder. A driver's license issued to an illegal alien in another state shall not be honored by the state of Missouri and the department of revenue for any purpose. The state of Missouri hereby declares that granting driver's licenses to illegal aliens is repugnant to the public policy of Missouri and therefore Missouri shall not extend full faith and credit to out-of-state driver's licenses issued to illegal aliens. As used in this section, the term "illegal alien" shall mean an alien who is not lawfully present in the United States, according to the terms of 8 U.S.C. Section 1101, et seq.

302.720. OPERATION WITHOUT LICENSE PROHIBITED, EXCEPTIONS — INSTRUCTION PERMIT, USE, DURATION, FEE — LICENSE, TEST REQUIRED, CONTENTS, FEE — DIRECTOR TO PROMULGATE RULES AND REGULATIONS FOR CERTIFICATION OF THIRD-PARTY TESTERS — CERTAIN PERSONS PROHIBITED FROM OBTAINING LICENSE, EXCEPTIONS — THIRD-PARTY TESTERS, WHEN. — 1. Except when operating under an instruction permit as described in this section, no person may drive a commercial motor vehicle unless the person has been issued a commercial driver's license with applicable endorsements valid for the type of vehicle being operated as specified in sections 302.700 to 302.780. A commercial driver's instruction permit shall allow the holder of a valid license to operate a commercial motor vehicle when accompanied by the holder of a commercial driver's license valid for the vehicle being operated and who occupies a seat beside the individual, or reasonably near the individual in the case of buses, for the purpose of giving instruction in driving the commercial motor vehicle. A commercial driver's instruction permit shall be valid for the vehicle being operated for a period of not more than six months, and shall not be issued until the permit holder has met all other requirements of sections 302.700 to 302.780, except for the driving test. A permit holder, unless otherwise disqualified, may be granted one six-month renewal within a one-year period. The fee for such permit or renewal shall be five dollars. In the alternative, a commercial driver's instruction permit shall be issued for a thirty-day period to allow the holder of a valid driver's license to operate a commercial motor vehicle if the applicant has completed all other requirements except the driving test. The permit may be renewed for one additional thirty-day period and the fee for the permit and for renewal shall be five dollars.

2. No person may be issued a commercial driver's license until he has passed written and driving tests for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the Secretary and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570), as well as any other requirements imposed by state law. Applicants for a hazardous materials endorsement must also meet the requirements of the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and required by regulations promulgated by the Secretary. Nothing contained in this subsection shall be construed as prohibiting the director from establishing alternate testing formats for those who are functionally illiterate; provided, however, that any such alternate test must comply with the minimum requirements of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. Law 99-570) as established by the Secretary.

(1) The written and driving tests shall be held at such times and in such places as the superintendent may designate. A twenty-five dollar examination fee shall be paid by the applicant upon completion of any written or driving test. The director shall delegate the power to conduct the examinations required under sections 302.700 to 302.780 to any member of the highway patrol or any person employed by the highway patrol qualified to give driving examinations. **The written test shall only be administered in the English language. No translators shall be allowed for applicants taking the test.**

(2) The director shall adopt and promulgate rules and regulations governing the certification of third-party testers by the department of revenue. Such rules and regulations shall substantially comply with the requirements of 49 CFR Part 383, Section 383.75. A certification to conduct

third-party testing shall be valid for one year, and the department shall charge a fee of one hundred dollars to issue or renew the certification of any third-party tester.

(3) Beginning August 28, 2006, the director shall only issue or renew third-party tester certification to junior colleges or community colleges established under chapter 178, RSMo, or to private companies who own, lease, or maintain their own fleet and administer in-house testing to their employees, or to school districts and their agents that administer in-house testing to the school district's or agent's employees. Any third-party tester who violates any of the rules and regulations adopted and promulgated pursuant to this section shall be subject to having his certification revoked by the department. The department shall provide written notice and an opportunity for the third-party tester to be heard in substantially the same manner as provided in chapter 536, RSMo. If any applicant submits evidence that he has successfully completed a test administered by a third-party tester, the actual driving test for a commercial driver's license may then be waived.

(4) Every applicant for renewal of a commercial driver's license shall provide such certifications and information as required by the secretary and if such person transports a hazardous material must also meet the requirements of the U.S. Patriot Act of 2001 (Title X of Public Law 107-56) as specified and required by regulations promulgated by the Secretary. Such person shall be required to take the written test for such endorsement. A twenty-five dollar examination fee shall be paid upon completion of such tests.

(5) The director shall have the authority to waive the driving skills test for any qualified military applicant for a commercial driver's license who is currently licensed at the time of application for a commercial driver's license. The director shall impose conditions and limitations to restrict the applicants from whom the department may accept alternative requirements for the skills test described in federal regulation 49 C.F.R. 383.77. An applicant must certify that, during the two-year period immediately preceding application for a commercial driver's license, all of the following apply:

(a) The applicant has not had more than one license;

(b) The applicant has not had any license suspended, revoked, or cancelled;

(c) The applicant has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in this chapter or federal rule 49 C.F.R. 383.51(b);

(d) The applicant has not had more than one conviction for any type of motor vehicle for serious traffic violations;

(e) The applicant has not had any conviction for a violation of state or local law relating to motor vehicle traffic control, but not including any parking violation, arising in connection with any traffic accident, and has no record of an accident in which he or she was at fault;

(f) The applicant is regularly employed in a job requiring operation of a commercial motor vehicle and has operated the vehicle for at least sixty days during the two years immediately preceding application for a commercial driver's license. The vehicle must be representative of the commercial motor vehicle the driver applicant operates or expects to operate;

(g) The applicant, if on active duty, must provide a notarized affidavit signed by a commanding officer as proof of driving experience as indicated in paragraph (f) of this subdivision;

(h) The applicant, if honorably discharged from military service, must provide a form-DD214 or other proof of military occupational specialty;

(i) The applicant must meet all federal and state qualifications to operate a commercial vehicle; and

(j) The applicant will be required to complete all applicable knowledge tests.

3. A commercial driver's license may not be issued to a person while the person is disqualified from driving a commercial motor vehicle, when a disqualification is pending in any state or while the person's driver's license is suspended, revoked, or canceled in any state; nor may a commercial driver's license be issued unless the person first surrenders in a manner

prescribed by the director any commercial driver's license issued by another state, which license shall be returned to the issuing state for cancellation.

4. Beginning July 1, 2005, the director shall not issue an instruction permit under this section unless the director verifies that the applicant is lawfully present in the United States before accepting the application. The director may, by rule or regulation, establish procedures to verify the lawful presence of the applicant under this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

544.470. COMMITMENT OF PRISONER, WHEN — PRESUMPTION FOR ALIENS UNLAWFULLY PRESENT. — 1. If the offense is not bailable, or if the person does not meet the conditions for release, as provided in section 544.455, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

2. There shall be a presumption that releasing the person under any conditions as provided by section 544.455 shall not reasonably assure the appearance of the person as required if the circuit judge or associate circuit judge reasonably believes that the person is an alien unlawfully present in the United States. If such presumption exists, the person shall be committed to the jail, as provided in subsection 1 of this section, until such person provides verification of his or her lawful presence in the United States to rebut such presumption. If the person adequately proves his or her lawful presence, the circuit judge or associate circuit judge shall review the issue of release, as provided under section 544.455, without regard to previous issues concerning whether the person is lawfully present in the United States. If the person cannot prove his or her lawful presence, the person shall continue to be committed to the jail and remain until discharged by due course of law.

577.722. TRANSPORT OF ILLEGAL ALIENS UNLAWFUL — VIOLATIONS, PENALTY. — 1. It shall be unlawful for any person to knowingly transport, move, or attempt to transport in the state of Missouri any illegal alien who is not lawfully present in the United States, according to the terms of 8 U.S.C. Section 1101, et seq., for the purposes of trafficking in violation of sections 566.200 to 566.215, RSMo, drug trafficking in violation of sections 195.222 to 195.223, RSMo, prostitution in violation of chapter 567, RSMo, or employment.

2. Any person violating the provisions of subsection 1 of this section shall be guilty of a felony for which the authorized term of imprisonment is a term of years not less than one year, or by a fine in an amount not less than one thousand dollars, or by both such fine and imprisonment.

3. Nothing in this section shall be construed to deny any victim of an offense under sections 566.200 to 566.215, RSMo, of rights afforded by the federal Trafficking Victims Protection Act of 2000, Public Law 106-386, as amended.

577.900. PERSONS CONFINED TO JAIL, VERIFICATION OF LAWFUL IMMIGRATION STATUS REQUIRED. — 1. If verification of the nationality or lawful immigration status of any person who is charged and confined to jail for any period of time cannot be made from documents in the possession of the prisoner or after a reasonable effort on the part of the arresting agency to determine the nationality or immigration status of the person so confined, verification shall be made by the arresting agency within forty-eight hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If it is determined that the prisoner is in the United States unlawfully, the arresting agency shall notify the United States Department of Homeland Security. Until August 28, 2009, this section shall only

apply to officers employed by the department of public safety to include: the highway patrol, water patrol, capitol police, fire marshal's office, and division of alcohol and tobacco control.

2. Nothing in this section shall be construed to deny any person bond or prevent a person from being released from confinement if such person is otherwise eligible for release.

578.570. FRAUD OR DECEPTION IN OBTAINING AN INSTRUCTION PERMIT, DRIVER'S LICENSE OR NONDRIVER'S LICENSE — PENALTY. — Any person who:

(1) Knowing or in reckless disregard of the truth, assists any person in committing fraud or deception during the examination process for an instruction permit, driver's license, or nondriver's license;

(2) Knowing or in reckless disregard of the truth, assists any person in making application for an instruction permit, driver's license, or nondriver's license that contains or is substantiated with false or fraudulent information or documentation;

(3) Knowing or in reckless disregard of the truth, assists any person in concealing a material fact or otherwise committing a fraud in an application for an instruction permit, driver's license, or nondriver's license; or

(4) Engages in any conspiracy to commit any of the preceding acts or aids or abets the commission of any of the preceding acts;

is guilty of a class A misdemeanor.

650.681. PROHIBITING OR RESTRICTING COMMUNICATION WITH FEDERAL AUTHORITIES REGARDING CITIZENSHIP OR IMMIGRATION, UNLAWFUL WHEN — ATTORNEY GENERAL TO ISSUE OPINION, WHEN — RIGHTS OF PUBLIC EMPLOYEES. — 1. Notwithstanding any other provision of law, no government entity, political subdivision, or government official within the state of Missouri shall prohibit, or in any way restrict, any government entity or official from communicating or cooperating with the United States Bureau of Immigration and Customs Enforcement regarding the citizenship or immigration status, lawful or unlawful, of any individual.

2. Municipalities and political subdivisions may collect and share the identity of persons by the same means the Federal Bureau of Investigation or its successor agency uses in its Integrated Automated Fingerprint Identification System or its successor program.

3. Notwithstanding any other provision of law, no person or agency within the state of Missouri shall prohibit, or in any way restrict, a public employee from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the United States Bureau of Immigration and Customs Enforcement;

(2) Maintaining such information; or

(3) Exchanging such information with any other federal, state, or local government entity.

4. Upon the complaint of any state resident regarding a specific government entity, agency, or political subdivision of this state or prior to the provision of funds or awarding of any grants to a government entity, agency, or political subdivision of this state, any member of the general assembly may request that the attorney general of the state of Missouri issue an opinion stating whether the government entity, agency, or political subdivision has current policies in contravention of subsections 1 and 3 of this section.

5. No state agency or department shall provide any funding or award any monetary grants to any government entity, agency, or political subdivision determined under

subsection 4 of this section to have a policy in contravention of subsections 1 and 3 of this section until the policy is repealed or no longer in effect.

6. The provisions of subsections 1 and 3 of this section shall not apply to any state or local agency administering one or more federal public benefit programs as such term is defined in 8 U.S.C. Section 1612.

[8.283. STATE CONTRACTS, EMPLOYMENT OF ILLEGAL ALIENS BY CONTRACTORS OR SUBCONTRACTORS, PENALTIES — IMMUNITY FOR ACTIONS UNDER STATUTE — PROVISIONS NOT EFFECTIVE IF PROHIBITED BY FEDERAL LAW. — 1. If a state agency for whom work is being performed by a contractor determines upon reasonable evidence that the contractor or a subcontractor engaged to complete work required by the contract hired one or more aliens who are unauthorized to work in the United States, the state agency shall order the contractor to cause the discharge of such unauthorized workers.

2. If upon reasonable evidence the state agency determines that a contractor or subcontractor has knowingly violated the Immigration Reform and Control Act of 1986, or its successor statute, in employing aliens unauthorized to work in the United States, the agency may cause up to twenty percent of the total amount of the contract or subcontract performed by the employer of such unauthorized workers to be withheld from payment to the employer in violation of such statute.

3. If a contractor is determined by a state agency upon reasonable evidence to have engaged a subcontractor to complete work required by the contract with knowledge that the subcontractor violated or intended to violate the Immigration Reform and Control Act of 1986, or its successor statute, in hiring or continuing to employ aliens unauthorized to work in the United States, the state agency may withhold from the contractor up to double the amount caused to be withheld from payments to the subcontractor.

4. Any contractor or subcontractor from whom payment is withheld under subsection 2 or 3 of this section shall be ineligible to perform other contracts or subcontracts for the state of Missouri for a period of two years from the date of such action.

5. No state agency or contractor taking any action authorized by this section shall be subject to any claim arising from such action and shall be deemed in compliance with the laws of this state regarding timely payment.

6. The provisions of this section shall only be effective to the extent that such provisions are not preempted or prohibited by Section 1324(a) of Title 8 of the United States Code, as now or hereafter amended, and any regulations promulgated thereunder, relating to the employment of unauthorized aliens.]

SECTION B. EFFECTIVE DATE. — The provisions of sections 67.307, 285.525, 285.530, 285.535, 285.540, 285.543, 285.550, 285.555, and 650.681 of section A of this act shall become effective on January 1, 2009.

SECTION C. EFFECTIVE DATE. — The enactment of section 292.675 of section A of this act shall become effective on August 28, 2009.

Approved July 7, 2008

HB 1550 [SS HCS HB 1550]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Expands the jurisdiction of juvenile courts, requires the Office of State Courts Administrator to conduct a study regarding juveniles, and revises the reimbursement of a certain drug court commissioner

AN ACT to repeal sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071, 211.091, 211.101, 221.515, 478.466, and 559.600, RSMo, and to enact in lieu thereof thirteen new sections relating to courts, with penalty provisions and a contingent effective date for certain sections.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071, 211.091, 211.101, 221.515, 478.466, and 559.600 RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 167.031, 211.021, 211.033, 211.034, 211.041, 211.061, 211.071, 211.091, 211.101, 221.515, 478.466, 559.600, and 1, to read as follows:

167.031. SCHOOL ATTENDANCE COMPULSORY, WHO MAY BE EXCUSED — NONATTENDANCE, PENALTY — HOME SCHOOL, DEFINITION, REQUIREMENTS — SCHOOL YEAR DEFINED — DAILY LOG, DEFENSE TO PROSECUTION — COMPULSORY ATTENDANCE AGE FOR THE DISTRICT DEFINED. — 1. Every parent, guardian or other person in this state having charge, control or custody of a child not enrolled in a public, private, parochial, parish school or full-time equivalent attendance in a combination of such schools and between the ages of seven years and the compulsory attendance age for the district is responsible for enrolling the child in a program of academic instruction which complies with subsection 2 of this section. Any parent, guardian or other person who enrolls a child between the ages of five and seven years in a public school program of academic instruction shall cause such child to attend the

academic program on a regular basis, according to this section. Nonattendance by such child shall cause such parent, guardian or other responsible person to be in violation of the provisions of section 167.061, except as provided by this section. A parent, guardian or other person in this state having charge, control, or custody of a child between the ages of seven years of age and the compulsory attendance age for the district shall cause the child to attend regularly some public, private, parochial, parish, home school or a combination of such schools not less than the entire school term of the school which the child attends; except that:

(1) A child who, to the satisfaction of the superintendent of public schools of the district in which he resides, or if there is no superintendent then the chief school officer, is determined to be mentally or physically incapacitated may be excused from attendance at school for the full time required, or any part thereof;

(2) A child between fourteen years of age and the compulsory attendance age for the district may be excused from attendance at school for the full time required, or any part thereof, by the superintendent of public schools of the district, or if there is none then by a court of competent jurisdiction, when legal employment has been obtained by the child and found to be desirable, and after the parents or guardian of the child have been advised of the pending action; or

(3) A child between five and seven years of age shall be excused from attendance at school if a parent, guardian or other person having charge, control or custody of the child makes a written request that the child be dropped from the school's rolls.

2. (1) As used in sections 167.031 to 167.071, a "home school" is a school, whether incorporated or unincorporated, that:

(a) Has as its primary purpose the provision of private or religious-based instruction;

(b) Enrolls pupils between the ages of seven years and the compulsory attendance age for the district, of which no more than four are unrelated by affinity or consanguinity in the third degree; and

(c) Does not charge or receive consideration in the form of tuition, fees, or other remuneration in a genuine and fair exchange for provision of instruction.

(2) As evidence that a child is receiving regular instruction, the parent shall, except as otherwise provided in this subsection:

(a) Maintain the following records:

a. A plan book, diary, or other written record indicating subjects taught and activities engaged in; and

b. A portfolio of samples of the child's academic work; and

c. A record of evaluations of the child's academic progress; or

d. Other written, or credible evidence equivalent to subparagraphs a., b. and c.; and

(b) Offer at least one thousand hours of instruction, at least six hundred hours of which will be in reading, language arts, mathematics, social studies and science or academic courses that are related to the aforementioned subject areas and consonant with the pupil's age and ability. At least four hundred of the six hundred hours shall occur at the regular home school location.

(3) The requirements of subdivision (2) of this subsection shall not apply to any pupil above the age of sixteen years.

3. Nothing in this section shall require a private, parochial, parish or home school to include in its curriculum any concept, topic, or practice in conflict with the school's religious doctrines or to exclude from its curriculum any concept, topic, or practice consistent with the school's religious doctrines. Any other provision of the law to the contrary notwithstanding, all departments or agencies of the state of Missouri shall be prohibited from dictating through rule, regulation or other device any statewide curriculum for private, parochial, parish or home schools.

4. A school year begins on the first day of July and ends on the thirtieth day of June following.

5. The production by a parent of a daily log showing that a home school has a course of instruction which satisfies the requirements of this section or, in the case of a pupil over the age of sixteen years who attended a metropolitan school district the previous year, a written statement that the pupil is attending home school in compliance with this section shall be a defense to any prosecution under this section and to any charge or action for educational neglect brought pursuant to chapter 210, RSMo.

6. As used in sections 167.031 to 167.051, the term "compulsory attendance age for the district" shall mean:

(1) Seventeen years of age for any metropolitan school district for which the school board adopts a resolution to establish such compulsory attendance age; provided that such resolution shall take effect no earlier than the school year next following the school year during which the resolution is adopted; and

(2) Sixteen years of age in all other cases.

The school board of a metropolitan school district for which the compulsory attendance age is seventeen years may adopt a resolution to lower the compulsory attendance age to sixteen years; provided that such resolution shall take effect no earlier than the school year next following the school year during which the resolution is adopted.

[7. The provisions of this section shall apply to any parent, guardian, or other person in this state having charge, control, or custody of a child between the ages of fifteen and eighteen if such child has not received a high school diploma or its equivalent and a court order has been issued as to such child under section 211.034, RSMo.**]**

211.021. DEFINITIONS. — 1. As used in this chapter, unless the context clearly requires otherwise:

(1) "Adult" means a person seventeen years of age or older **except for seventeen year old children as defined in this section**;

(2) "Child" means **[**a**] any** person under seventeen years of age **and shall mean, in addition, any person over seventeen but not yet eighteen years of age alleged to have committed a status offense**;

(3) "Juvenile court" means the juvenile division or divisions of the circuit court of the county, or judges while hearing juvenile cases assigned to them;

(4) "Legal custody" means the right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline of a child. Legal custody may be taken from a parent only by court action and if the legal custody is taken from a parent without termination of parental rights, the parent's duty to provide support continues even though the person having legal custody may provide the necessities of daily living;

(5) "Parent" means either a natural parent or a parent by adoption and if the child is illegitimate, "parent" means the mother;

(6) "Shelter care" means the temporary care of juveniles in physically unrestricting facilities pending final court disposition. These facilities may include:

(a) "Foster home", the private home of foster parents providing twenty-four-hour care to one to three children unrelated to the foster parents by blood, marriage or adoption;

(b) "Group foster home", the private home of foster parents providing twenty-four-hour care to no more than six children unrelated to the foster parents by blood, marriage or adoption;

(c) "Group home", a child care facility which approximates a family setting, provides access to community activities and resources, and provides care to no more than twelve children**;**

(7) "Status offense", any offense as described in subdivision (2) of subsection 1 of section 211.031.

2. The amendments to subsection 1 of this section, as provided for in this act, shall not take effect until such time as appropriations by the general assembly for additional

juvenile officer full-time equivalents and deputy juvenile officer full-time equivalents shall exceed by one million nine hundred thousand dollars the amount spent by the state for such officers in fiscal year 2007 and appropriations by the general assembly to single first class counties for juvenile court personnel costs shall exceed by one million nine hundred thousand dollars the amount spent by the state for such juvenile court personnel costs in fiscal year 2007 and notice of such appropriations has been given to the revisor of statutes.

211.033. DETENTION FOR VIOLATION OF TRAFFIC ORDINANCES — NO CIVIL OR CRIMINAL LIABILITY CREATED — CONTINGENT EFFECTIVE DATE. — **1.** No person under the age of seventeen years, except those transferred to the court of general jurisdiction under the provisions of section 211.071 shall be detained in a jail or other adult detention facility as that term is defined in section 211.151. A traffic court judge may request the juvenile court to order the commitment of a person under the age of seventeen to a juvenile detention facility.

2. Nothing in this section shall be construed as creating any civil or criminal liability for any law enforcement officer, juvenile officer, school personnel, or court personnel for any action taken or failure to take any action involving a minor child who remains under the jurisdiction of the juvenile court under this section if such action or failure to take action is based on a good faith belief by such officer or personnel that the minor child is not under the jurisdiction of the juvenile court.

3. The amendments to subsection 2 of this section, as provided for in this act, shall not take effect until such time as the provisions of section 211.021 shall take effect in accordance with subsection 2 of section 211.021.

211.034. EXTENSION OF JUVENILE COURT JURISDICTION PERMITTED, WHEN — PROCEDURE — IMMUNITY FROM LIABILITY FOR CERTAIN PERSONS, WHEN — EXPIRATION DATE. — 1. Any parent, legal guardian, or other person having legal custody of a minor child may, at any time after the minor child attains fifteen years of age and before the minor child attains eighteen years of age, petition the circuit court for the county where the minor child and parent, legal guardian, or other person having legal custody of the minor child reside to extend the jurisdiction of the juvenile court until the minor child reaches the age of eighteen years.

2. The petition shall be accompanied by verified proof of service on the minor child and certified copies of documents demonstrating that the petitioner is the parent, legal guardian, or other legal custodian of the minor child. If the petitioner is not the natural parent of the minor child, the petition shall be accompanied by:

(1) An affidavit from at least one of the child's natural parents consenting to the granting of the petition; or

(2) An affidavit from the petitioner stating that the natural parents:

(a) Are deceased;

(b) Have been declared legally incompetent;

(c) Have had their parental rights as to the minor child terminated by a court of competent jurisdiction;

(d) Have voluntarily surrendered their parental rights as to the minor child;

(e) Have abandoned the minor child;

(f) Are unknown; or

(g) Are otherwise unavailable, in which case, the affidavit shall state the reasons why the natural parents are unavailable.

In all cases where any parent, legal guardian, or other person having legal custody of a minor child petitions the court to extend the jurisdiction of the juvenile court until the minor child's eighteenth birthday, the court shall appoint an attorney to represent the minor child. An individual filing the petition shall pay the attorney fees of the minor child.

3. Upon the filing of a petition under this section and a determination by the court in favor of the petitioner, the circuit court shall issue an order declaring that the minor child shall remain under the jurisdiction of the juvenile court for all purposes under state law until the minor child reaches eighteen years of age; except that, for purposes of criminal law and procedure, including arrest, prosecution, trial, and punishment, if the minor is certified as an adult, the minor shall remain a certified adult despite the issuance of a court order under this section. Such minor child shall be subject to the compulsory school attendance requirements of section 167.031, RSMo, until the minor child receives a high school diploma or its equivalent, or reaches eighteen years of age. The court order shall be filed with the circuit clerk for the county where the petitioner resides.

4. Nothing in this section shall be construed as creating any civil or criminal liability for any law enforcement officer, juvenile officer, school personnel, or court personnel for any action taken or failure to take any action involving a minor child who remains under the jurisdiction of the juvenile court under this section if such action or failure to take action is based on a good faith belief by such officer or personnel that the minor child is not under the jurisdiction of the juvenile court.

5. The provisions of this section shall expire when the amendments to subsection 1 of section 211.021 take effect in accordance with subsection 2 of section 211.021.

211.041. CONTINUING JURISDICTION OVER CHILD, EXCEPTION, SEVENTEEN-YEAR-OLD VIOLATING STATE OR MUNICIPAL LAWS. — When jurisdiction over the person of a child has been acquired by the juvenile court under the provisions of this chapter in proceedings coming within the applicable provisions of section 211.031, the jurisdiction of the child may be retained for the purpose of this chapter until he **or she** has attained the age of twenty-one years, except in cases where he **or she** is committed to and received by the division of youth services, unless jurisdiction has been returned to the committing court by provisions of chapter 219, RSMo, through requests of the court to the division of youth services and except in any case where he **or she** has not paid an assessment imposed in accordance with section 211.181 or in cases where the judgment for restitution entered in accordance with section 211.185 has not been satisfied. Every child over whose person the juvenile court retains jurisdiction shall be prosecuted under the general law for any violation of a state law or of a municipal ordinance which he **or she** commits after he **or she** becomes seventeen years of age. The juvenile court shall have no jurisdiction with respect to any such violation and, so long as it retains jurisdiction of the child, shall not exercise its jurisdiction in such a manner as to conflict with any other court's jurisdiction as to any such violation.

211.061. ARRESTED CHILD TAKEN BEFORE JUVENILE COURT — TRANSFER OF PROSECUTION TO JUVENILE COURT — LIMITATIONS ON DETENTION OF JUVENILE — DETENTION HEARING, NOTICE. — 1. When a child is taken into custody with or without warrant for an offense, the child, together with any information concerning **[**him**]** **the child** and the personal property found in **[**his**]** **the child's** possession, shall be taken immediately and directly before the juvenile court or delivered to the juvenile officer or person acting for him.

2. If any person is taken before a circuit or associate circuit judge not assigned to juvenile court or a municipal judge, and it is then, or at any time thereafter, ascertained that he **or she** was under the age of seventeen years at the time he **or she** is alleged to have committed the offense, or that he **or she** is subject to the jurisdiction of the juvenile court as provided by this chapter, it is the duty of the judge forthwith to transfer the case or refer the matter to the juvenile court, and direct the delivery of such person, together with information concerning him **or her** and the personal property found in his **or her** possession, to the juvenile officer or person acting as such.

3. When the juvenile court is informed that a child is in detention it shall examine the reasons therefor and shall immediately:

(1) Order the child released; or

(2) Order the child continued in detention until a detention hearing is held. An order to continue the child in detention shall only be entered upon the filing of a petition or motion to modify and a determination by the court that probable cause exists to believe that the child has committed acts specified in the petition or motion that bring the child within the jurisdiction of the court under subdivision (2) or (3) of subsection 1 of section 211.031.

4. A juvenile shall not remain in detention for a period greater than twenty-four hours unless the court orders a detention hearing. If such hearing is not held within three days, excluding Saturdays, Sundays and legal holidays, the juvenile shall be released from detention unless the court for good cause orders the hearing continued. The detention hearing shall be held within the judicial circuit at a date, time and place convenient to the court. Notice of the date, time and place of a detention hearing, and of the right to counsel, shall be given to the juvenile and his **or her** custodian in person, by telephone, or by such other expeditious method as is available.

211.071. CERTIFICATION OF JUVENILE FOR TRIAL AS ADULT — PROCEDURE — MANDATORY HEARING, CERTAIN OFFENSES — MISREPRESENTATION OF AGE, EFFECT. — 1. If a petition alleges that a child between the ages of twelve and seventeen has committed an offense which would be considered a felony if committed by an adult, the court may, upon its own motion or upon motion by the juvenile officer, the child or the child's custodian, order a hearing and may, in its discretion, dismiss the petition and such child may be transferred to the court of general jurisdiction and prosecuted under the general law; except that if a petition alleges that any child has committed an offense which would be considered first degree murder under section 565.020, RSMo, second degree murder under section 565.021, RSMo, first degree assault under section 565.050, RSMo, forcible rape under section 566.030, RSMo, forcible sodomy under section 566.060, RSMo, first degree robbery under section 569.020, RSMo, or distribution of drugs under section 195.211, RSMo, or has committed two or more prior unrelated offenses which would be felonies if committed by an adult, the court shall order a hearing, and may in its discretion, dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law.

2. Upon apprehension and arrest, jurisdiction over the criminal offense allegedly committed by any person between seventeen and twenty-one years of age over whom the juvenile court has retained continuing jurisdiction shall automatically terminate and that offense shall be dealt with in the court of general jurisdiction as provided in section 211.041.

3. Knowing and willful age misrepresentation by a juvenile subject shall not affect any action or proceeding which occurs based upon the misrepresentation. Any evidence obtained during the period of time in which a child misrepresents his **or her** age may be used against the child and will be subject only to rules of evidence applicable in adult proceedings.

4. Written notification of a transfer hearing shall be given to the juvenile and his **or her** custodian in the same manner as provided in sections 211.101 and 211.111. Notice of the hearing may be waived by the custodian. Notice shall contain a statement that the purpose of the hearing is to determine whether the child is a proper subject to be dealt with under the provisions of this chapter, and that if the court finds that the child is not a proper subject to be dealt with under the provisions of this chapter, the petition will be dismissed to allow for prosecution of the child under the general law.

5. The juvenile officer may consult with the office of prosecuting attorney concerning any offense for which the child could be certified as an adult under this section. The prosecuting or circuit attorney shall have access to police reports, reports of the juvenile or deputy juvenile officer, statements of witnesses and all other records or reports relating to the offense alleged to have been committed by the child. The prosecuting or circuit attorney shall have access to the disposition records of the child when the child has been adjudicated pursuant to subdivision (3) of subsection 1 of section 211.031. The prosecuting attorney shall not divulge any information

regarding the child and the offense until the juvenile court at a judicial hearing has determined that the child is not a proper subject to be dealt with under the provisions of this chapter.

6. A written report shall be prepared in accordance with this chapter developing fully all available information relevant to the criteria which shall be considered by the court in determining whether the child is a proper subject to be dealt with under the provisions of this chapter and whether there are reasonable prospects of rehabilitation within the juvenile justice system. These criteria shall include but not be limited to:

(1) The seriousness of the offense alleged and whether the protection of the community requires transfer to the court of general jurisdiction;

(2) Whether the offense alleged involved viciousness, force and violence;

(3) Whether the offense alleged was against persons or property with greater weight being given to the offense against persons, especially if personal injury resulted;

(4) Whether the offense alleged is a part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the juvenile code;

(5) The record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions and other placements;

(6) The sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition and pattern of living;

(7) The age of the child;

(8) The program and facilities available to the juvenile court in considering disposition;

(9) Whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court; and

(10) Racial disparity in certification.

7. If the court dismisses the petition to permit the child to be prosecuted under the general law, the court shall enter a dismissal order containing:

(1) Findings showing that the court had jurisdiction of the cause and of the parties;

(2) Findings showing that the child was represented by counsel;

(3) Findings showing that the hearing was held in the presence of the child and his counsel; and

(4) Findings showing the reasons underlying the court's decision to transfer jurisdiction.

8. A copy of the petition and order of the dismissal shall be sent to the prosecuting attorney.

9. When a petition has been dismissed thereby permitting a child to be prosecuted under the general law, the jurisdiction of the juvenile court over that child is forever terminated, except as provided in subsection 10 of this section, for an act that would be a violation of a state law or municipal ordinance.

10. If a petition has been dismissed thereby permitting a child to be prosecuted under the general law and the child is found not guilty by a court of general jurisdiction, the juvenile court shall have jurisdiction over any later offense committed by that child which would be considered a misdemeanor or felony if committed by an adult, subject to the certification provisions of this section.

11. If the court does not dismiss the petition to permit the child to be prosecuted under the general law, it shall set a date for the hearing upon the petition as provided in section 211.171.

211.091. PETITION IN JUVENILE COURT — CONTENTS — DISMISSAL, JUVENILE OFFICER TO ASSESS IMPACT ON BEST INTEREST OF CHILD. — 1. The petition shall be entitled "In the interest of ....., a child under seventeen years of age"**[**. If a petition is filed pursuant to the provisions of subdivision (1) of subsection 1 of section 211.031, the petition shall be entitled**] or** "In the interest of ....., a child **[**under**]** seventeen years of age" or "In the interest of ....., a person seventeen years of age" **as appropriate to the subsection of section 211.031 that provides the basis for the filing of the petition**.

2. The petition shall set forth plainly:

(1) The facts which bring the child or person seventeen years of age within the jurisdiction of the court;

(2) The full name, birth date, and residence of the child or person seventeen years of age;

(3) The names and residence of his **or her** parents, if living;

(4) The name and residence of his **or her** legal guardian if there be one, of the person having custody of the child or person seventeen years of age or of the nearest known relative if no parent or guardian can be found; and

(5) Any other pertinent data or information.

3. If any facts required in subsection 2 of this section are not known by the petitioner, the petition shall so state.

4. Prior to the voluntary dismissal of a petition filed under this section, the juvenile officer shall assess the impact of such dismissal on the best interests of the child, and shall take all actions practicable to minimize any negative impact.

211.101. ISSUANCE OF SUMMONS — NOTICE — TEMPORARY CUSTODY OF CHILD — SUBPOENAS. — 1. After a petition has been filed, unless the parties appear voluntarily, the juvenile court shall issue a summons in the name of the state of Missouri requiring the person who has custody of the child or person seventeen years of age to appear personally and, unless the court orders otherwise, to bring the child or person seventeen years of age before the court, at the time and place stated.

2. If the person so summoned is other than a parent or guardian of the child or person seventeen years of age, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed.

3. If it appears that the child or person seventeen years of age is in such condition or surroundings that his **or her** welfare requires that his **or her** custody be immediately assumed by the court, the judge may order, by endorsement upon the summons, the officer serving it to take the child or person seventeen years of age into custody at once.

4. Subpoena may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

221.515. JAILERS AUTHORIZED TO SERVE ARREST WARRANTS ON INMATES — JAILERS MAY CARRY FIREARMS, WHEN — ESCAPED PRISONERS, POWER OF JAILER TO ARREST. — **1.** Any person designated a jailer under the provisions of this chapter shall have the power to serve **[**an arrest warrant**]** **civil process and arrest warrants** on any person who **surrenders himself or herself to the facility under an arrest warrant or** is already an inmate in the custody of the facility in or at which such jailer is employed.

2. Under the rules and regulations of the sheriff, employees designated as jailers may carry firearms when necessary for the proper discharge of their duties as jailers in this state under the provisions of this chapter.

3. Such persons authorized to act by the sheriff as jailers under the rules and regulations of the sheriff shall have the same power as granted any other law enforcement officers in this state to arrest escaped prisoners and apprehend all persons who may be aiding and abetting such escape while in the custody of the sheriff in accordance with state law.

478.466. DRUG COURT COMMISSIONER, APPOINTMENT, QUALIFICATIONS, COMPENSATION, POWERS AND DUTIES — SURCHARGE (JACKSON COUNTY). — 1. In the sixteenth judicial circuit consisting of the county of Jackson, a majority of the court en banc may appoint one person, who shall possess the same qualifications as an associate circuit judge, to act as drug court commissioner. The commissioner shall be appointed for a term of four years. The compensation of the commissioner shall be the same as that of an associate circuit judge and**[**, subject to appropriation from the county legislature of the county wherein such circuit is wholly

located, reimbursed from proceeds from the county antidrug sales tax adopted pursuant to section 67.547, RSMo. The county wherein such circuit is wholly located shall pay to and reimburse the state for the actual costs of the salary and benefits of the drug commissioner appointed pursuant to this section**] shall be paid out of the same source as the compensation of all other drug court commissioners in the state**. The retirement benefits of such commissioner shall be the same as those of an associate circuit judge, payable in the same manner and from the same source as those of an associate circuit judge. Subject to approval or rejection by a circuit judge, the commissioner shall have all the powers and duties of a circuit judge. A circuit judge shall by order of record reject or confirm any order, judgment and decree of the commissioner within the time the judge could set aside such order, judgment or decree had the same been made by him. If so confirmed, the order, judgment or decree shall have the same effect as if made by the judge on the date of its confirmation.

2. The court administrator of the sixteenth judicial circuit shall charge and collect a surcharge of thirty dollars in all proceedings assigned to the drug commissioner for disposition, provided that the surcharge shall not be charged in any proceeding when costs are waived or are to be paid by the state, county or municipality. Moneys obtained from such surcharge shall be collected and disbursed in the manner provided by sections 488.010 to 488.020, RSMo, and payable to the drug commissioner for operation of the drug court.

559.600. MISDEMEANOR PROBATION MAY BE PROVIDED BY CONTRACT WITH PRIVATE ENTITIES, NOT TO EXCLUDE BOARD OF PROBATION AND PAROLE. — In cases where the board of probation and parole is not required under section 217.750, RSMo, to provide probation supervision and rehabilitation services for misdemeanor offenders, the circuit and associate circuit judges in a circuit may contract with one or more private entities **or other court-approved entity** to provide such services. The court-approved **[**private**]** entity**, including private or other entities,** shall act as a misdemeanor probation office in that circuit and shall, pursuant to the terms of the contract, supervise persons placed on probation by the judges for class A, B, and C misdemeanor offenses, specifically including persons placed on probation for violations of section 577.023, RSMo. Nothing in sections 559.600 to 559.615 shall be construed to prohibit the board of probation and parole, or the court, from supervising misdemeanor offenders in a circuit where the judges have entered into a contract with a **[**private**]** probation entity.

SECTION 1. DEFINITION OF CHILD, STATE COURTS ADMINISTRATOR TO CONDUCT A STUDY AND ISSUE A REPORT, WHEN. — The office of state courts administrator shall conduct a study and report to the general assembly by June 30, 2009, on the impact of changing the definition of child, as used in section 211.031, RSMo, to include any person over seventeen years of age but not yet eighteen years of age alleged to have committed a status offense as defined in subdivision (2) of subsection 1 of section 211.031, RSMo. The report shall contain information regarding the impact on caseloads of juvenile officers, including the average increase in caseload per juvenile officer for each judicial circuit, and the number of children affected by the change in definition.

Approved July 10, 2008

HB 1570 [SCS HB 1570]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Adds the services of guardians ad litem to the priority list when a family court is determining how to spend moneys in the county family services and justice fund

AN ACT to repeal section 488.2300, RSMo, and to enact in lieu thereof two new sections relating to guardians ad litem.

SECTION
A. Enacting clause.
484.302. Standards for representation to be adopted statewide, when.
488.2300. Family services and justice fund established, where — purpose — surcharge, collection, payment — fundings for enhanced services, conditions — reimbursement for costs of salaries.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 488.2300, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 484.302 and 488.2300, to read as follows:

484.302. STANDARDS FOR REPRESENTATION TO BE ADOPTED STATEWIDE, WHEN. — Recognizing that Missouri children have a right to adequate and effective representation in child welfare cases, the September 17, 1996, Missouri supreme court standards for representation by guardians ad litem shall be adopted statewide and each circuit shall devise a plan for implementation which takes into account the individual needs of their circuit as well as the negative impact that excessive caseloads have upon effectiveness of counsel. These plans shall be approved by the supreme court en banc and fully implemented by July 1, 2011.

488.2300. FAMILY SERVICES AND JUSTICE FUND ESTABLISHED, WHERE — PURPOSE — SURCHARGE, COLLECTION, PAYMENT — FUNDINGS FOR ENHANCED SERVICES, CONDITIONS — REIMBURSEMENT FOR COSTS OF SALARIES. — 1. A "Family Services and Justice Fund" is hereby established in each county or circuit with a family court, for the purpose of aiding with the operation of the family court divisions and services provided by those divisions. In circuits or counties having a family court, the circuit clerk shall charge and collect a surcharge of thirty dollars in all proceedings falling within the jurisdiction of the family court. The surcharge shall not be charged when no court costs are otherwise required, shall not be charged against the petitioner for actions filed pursuant to the provisions of chapter 455, RSMo, but may be charged to the respondent in such actions, shall not be charged to a government agency and shall not be charged in any proceeding when costs are waived or are to be paid by the state, county or municipality.

2. In juvenile proceedings under chapter 211, RSMo, a judgment of up to thirty dollars may be assessed against the child, parent or custodian of the child, in addition to other amounts authorized by law, in informal adjustments made under the provisions of sections 211.081 and 211.083, RSMo, and in an order of disposition or treatment under the provisions of section 211.181, RSMo. The judgment may be ordered paid to the clerk of the circuit where the assessment is imposed.

3. All sums collected pursuant to this section and section 487.140, RSMo, shall be payable to the various county family services and justice funds.

4. Any moneys in the family services and justice fund not expended for salaries of commissioners, family court administrators and family court staff shall be used toward funding the enhanced services provided as a result of the establishment of a family court; however, it shall not replace or reduce the current and ongoing responsibilities of the counties to provide funding for the courts as required by law. Moneys collected for the family services and justice fund shall be expended for the benefit of litigants and recipients of services in the family court, with priority given to services such as **guardians ad litem,** mediation, counseling, home studies, psychological evaluation and other forms of alternative dispute-resolution services. Expenditures shall be made at the discretion of the presiding judge or family court administrative judge, as

designated by the circuit and associate circuit judges en banc, for the implementation of the family court system as set forth in this section. No moneys from the family services and justice fund may be used to pay for mediation in any cause of action in which domestic violence is alleged.

5. From the funds collected pursuant to this section and retained in the family services and justice fund, each circuit or county in which a family court commissioner in addition to those commissioners existing as juvenile court commissioners on August 28, 1993, have been appointed pursuant to sections 487.020 to 487.040, RSMo, shall pay to and reimburse the state for the actual costs of that portion of the salaries of family court commissioners appointed pursuant to the provisions of sections 487.020 to 487.040, RSMo.

6. No moneys deposited in the family services and justice fund may be expended for capital improvements.

Approved June 25, 2008

HB 1575 [HCS HB 1575]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Designates a portion of State Highway 87 in Moniteau County as the "Lance Corporal Leon B. Deraps Memorial Highway"

AN ACT to amend chapter 227, RSMo, by adding thereto one new section relating to a memorial highway designation.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 227, RSMo, is amended by adding thereto one new section, to be known as section 227.393, to read as follows:

227.393. LANCE CORPORAL LEON B. DERAPS MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF HIGHWAY 87 IN MONITEAU COUNTY. — The portion of Highway 87 in Moniteau County from the intersection of Highway AA south four miles shall be designated the "Lance Corporal Leon B. Deraps Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway, with the costs to be paid for by private donations.

Approved June 17, 2008

HB 1608 [HB 1608]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Authorizes counties to preserve electronic images of original cancelled checks instead of the actual check

AN ACT to repeal section 50.172, RSMo, and to enact in lieu thereof one new section relating to preservation of county documents.

SECTION
A. Enacting clause.
50.172. Documents approved by commission to be preserved — destruction of documents, method — replacement of lost or destroyed checks, procedure.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 50.172, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 50.172, to read as follows:

50.172. DOCUMENTS APPROVED BY COMMISSION TO BE PRESERVED — DESTRUCTION OF DOCUMENTS, METHOD — REPLACEMENT OF LOST OR DESTROYED CHECKS, PROCEDURE. — 1. The original of all accounts, vouchers and documents approved or to be approved by the county commission shall be preserved in the office of the county clerk or at some other place approved by the secretary of state pursuant to the provisions of section 28.120, RSMo; and copies thereof shall be given to any person, county, city, town, township and school or special road district interested therein upon payment of the usual fee for copying same. **For purposes of this section, "original" shall include any electronic image of an original cancelled check that is the legal equivalent of an original check under the federal Check 21 Act, 12 U.S.C. 5001, et seq., as amended.**

2. Annually or in accordance with destruction rules adopted by the secretary of state, the county clerk may destroy by burning or by any other method satisfactory to the county commission all paid accounts, vouchers, duplicate receipts, checks and other documents which may have been on file in the office of the county clerk for a period of five years or longer, except such documents as may at the time be the subject of litigation or dispute. The plan for the retention and destruction of financial records shall follow the generally recognized governmental reporting practices.

3. Lost or destroyed county checks shall be replaced in accordance with rules of procedure therefor as established by the state auditor in the uniform accounting system established for counties pursuant to the provisions of section 29.180, RSMo.

Approved June 10, 2008

HB 1628 [HB 1628]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Authorizes an exemption from the alternative fuel decal and tax requirement for historical vehicles powered by liquid petroleum or natural gas

AN ACT to repeal section 142.869, RSMo, and to enact in lieu thereof one new section relating to alternative fuel decals, with penalty provisions.

SECTION
A. Enacting clause.
142.869. Alternative fuel decal fee in lieu of tax — decal — penalty.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 142.869, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 142.869, to read as follows:

142.869. ALTERNATIVE FUEL DECAL FEE IN LIEU OF TAX — DECAL — PENALTY. — 1. The tax imposed by this chapter shall not apply to passenger motor vehicles, buses as defined in section 301.010, RSMo, or commercial motor vehicles registered in this state which are powered by alternative fuel, and for which a valid decal has been acquired as provided in this section. The owners or operators of such motor vehicles shall, in lieu of the tax imposed by section 142.803, pay an annual alternative fuel decal fee as follows: seventy-five dollars on each passenger motor vehicle, school bus as defined in section 301.010, RSMo, and commercial motor vehicle with a licensed gross vehicle weight of eighteen thousand pounds or less; one hundred dollars on each motor vehicle with a licensed gross weight in excess of eighteen thousand pounds but not more than thirty-six thousand pounds used for farm or farming transportation operations and registered with a license plate designated with the letter "F"; one hundred fifty dollars on each motor vehicle with a licensed gross vehicle weight in excess of eighteen thousand pounds but less than or equal to thirty-six thousand pounds, and each passenger-carrying motor vehicle subject to the registration fee provided in sections 301.059, 301.061 and 301.063, RSMo; two hundred fifty dollars on each motor vehicle with a licensed gross weight in excess of thirty-six thousand pounds used for farm or farming transportation operations and registered with a license plate designated with the letter "F"; and one thousand dollars on each motor vehicle with a licensed gross vehicle weight in excess of thirty-six thousand pounds. **Notwithstanding provisions of this section to the contrary, motor vehicles licensed as historic under section 301.131, RSMo, which are powered by alternative fuel shall be exempt from both the tax imposed by this chapter and the alternative fuel decal requirements of this section.**

2. Except interstate fuel users and vehicles licensed under a reciprocity agreement as defined in section 142.617, the tax imposed by section 142.803 shall not apply to motor vehicles registered outside this state which are powered by alternative fuel, and for which a valid temporary alternative fuel decal has been acquired as provided in this section. The owners or operators of such motor vehicles shall, in lieu of the tax imposed by section 142.803, pay a temporary alternative fuel decal fee of eight dollars on each such vehicle. Such decals shall be valid for a period of fifteen days from the date of issuance and shall be attached to the lower right-hand corner of the front windshield on the motor vehicle for which it was issued. Such decal and fee shall not be transferable. All proceeds from such decal fees shall be deposited as specified in section 142.345. Alternative fuel dealers selling such decals in accordance with rules and regulations prescribed by the director shall be allowed to retain fifty cents for each decal fee timely remitted to the director.

3. The director shall annually, on or before January thirty-first of each year, collect or cause to be collected from owners or operators of the motor vehicles specified in subsection 1 of this section the annual decal fee. Applications for such decals shall be supplied by the department of revenue. In the case of a motor vehicle which is not in operation by January thirty-first of any year, a decal may be purchased for a fractional period of such year, and the amount of the decal fee shall be reduced by one-twelfth for each complete month which shall have elapsed since the beginning of such year.

4. Upon the payment of the fee required by subsection 1 of this section, the director shall issue a decal, which shall be valid for the current calendar year and shall be attached to the lower right-hand corner of the front windshield on the motor vehicle for which it was issued.

5. The decal fee paid pursuant to subsection 1 of this section for each motor vehicle shall be transferable upon a change of ownership of the motor vehicle and, if the LP gas or natural gas equipment is removed from a motor vehicle upon a change of ownership and is reinstalled in another motor vehicle, upon such reinstallation. Such transfers shall be accomplished in accordance with rules and regulations promulgated by the director.

6. It shall be unlawful for any person to operate a motor vehicle required to have an alternative fuel decal upon the highways of this state without a valid decal.

7. No person shall cause to be put, or put, LP gas or natural gas into the fuel supply receptacle of a motor vehicle required to have an alternative fuel decal unless the motor vehicle has a valid decal attached to it. Sales of fuel placed in the supply receptacle of a motor vehicle displaying such decal shall be recorded upon an invoice, which invoice shall include the decal number, the motor vehicle license number and the number of gallons placed in such supply receptacle.

8. Any person violating any provision of this section is guilty of an infraction and shall, upon conviction thereof, be fined five hundred dollars.

9. Motor vehicles displaying a valid alternative fuel decal are exempt from the licensing and reporting requirements of this chapter.

Approved June 19, 2008

HB 1640 [SCS HB 1640]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Establishes the Debbi Daniel Law which disallows court-ordered adoption decrees or a adoptive parents' or adoptee's request for a new birth certificate changing the name of a birth parent in an adoption

AN ACT to repeal section 193.125, RSMo, and to enact in lieu thereof one new section relating to birth certificates.

SECTION

A. Enacting clause.

193.125. Debbi Daniel law — adoption — new birth certificate, when — reports — duties — inspection of certain records by court order only.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 193.125, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 193.125, to read as follows:

193.125. DEBBI DANIEL LAW — ADOPTION — NEW BIRTH CERTIFICATE, WHEN — REPORTS — DUTIES — INSPECTION OF CERTAIN RECORDS BY COURT ORDER ONLY. — 1. **This section shall be known and may be cited as the "Debbi Daniel Law".**

2. Except as otherwise provided in subsection 3 of this section, for each adoption decreed by a court of competent jurisdiction in this state, the court shall require the preparation of a certificate of decree of adoption on a form as prescribed or approved by the state registrar. The certificate of decree of adoption shall include such facts as are necessary to locate and

identify the certificate of birth of the person adopted, and shall provide information necessary to establish a new certificate of birth of the person adopted and shall identify the court and county of the adoption and be certified by the clerk of the court. The state registrar shall file the original certificate of birth with the certificate of decree of adoption and such file may be opened by the state registrar only upon receipt of a certified copy of an order as decreed by the court of adoption.

[2.**]** **3. No new certificate of birth shall be established following an adoption by a stepparent if so requested by the adoptive parent or the adoptive stepparent of the child.**

4. Information necessary to prepare the report of adoption shall be furnished by each petitioner for adoption or the petitioner's attorney. The social welfare agency or any person having knowledge of the facts shall supply the court with such additional information as may be necessary to complete the report. The provision of such information shall be prerequisite to the issuance of a final decree in the matter by the court.

[3.**]** **5.** Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof, which shall include such facts as are necessary to identify the original adoption report and the facts amended in the adoption decree as shall be necessary to properly amend the birth record.

[4.**]** **6.** Not later than the fifteenth day of each calendar month or more frequently as directed by the state registrar the clerk of the court shall forward to the state registrar reports of decrees of adoption, annulment of adoption and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the state registrar shall require.

[5.**]** **7.** When the state registrar shall receive a report of adoption, annulment of adoption, or amendment of a decree of adoption for a person born outside this state, he or she shall forward such report to the state registrar in the state of birth.

[6.**]** **8.** In a case of adoption in this state of a person not born in any state, territory or possession of the United States or country not covered by interchange agreements, the state registrar shall upon receipt of the certificate of decree of adoption prepare a birth certificate in the name of the adopted person, as decreed by the court. The state registrar shall file the certificate of the decree of adoption, and such documents may be opened by the state registrar only by an order of court. The birth certificate prepared under this subsection shall have the same legal weight as evidence as a delayed or altered birth certificate as provided in section 193.235.

[7.**]** **9.** The department, upon receipt of proof that a person has been adopted by a Missouri resident pursuant to laws of countries other than the United States, shall prepare a birth certificate in the name of the adopted person as decreed by the court of such country. If such proof contains the surname of either adoptive parent, the department of health and senior services shall prepare a birth certificate as requested by the adoptive parents. Any subsequent change of the name of the adopted person shall be made by a court of competent jurisdiction. The proof of adoption required by the department shall include a copy of the original birth certificate and adoption decree, an English translation of such birth certificate and adoption decree, and a copy of the approval of the immigration of the adopted person by the Immigration and Naturalization Service of the United States government which shows the child lawfully entered the United States. The authenticity of the translation of the birth certificate and adoption decree required by this subsection shall be sworn to by the translator in a notarized document. The state registrar shall file such documents received by the department relating to such adoption and such documents may be opened by the state registrar only by an order of a court. A birth certificate pursuant to this subsection shall be issued upon request of one of the adoptive parents of such adopted person or upon request of the adopted person if of legal age. The birth certificate prepared pursuant to the provisions of this subsection shall have the same legal weight as evidence as a delayed or altered birth certificate as provided in sections 193.005 to 193.325.

[8.**]** **10.** If no certificate of birth is on file for the person under twelve years of age who has been adopted, a belated certificate of birth shall be filed with the state registrar as provided in sections 193.005 to 193.325 before a new birth record is to be established as result of adoption. A new certificate is to be established on the basis of the adoption under this section and shall be prepared on a certificate of live birth form.

[9.**]** **11.** If no certificate of birth has been filed for a person twelve years of age or older who has been adopted, a new birth certificate is to be established under this section upon receipt of proof of adoption as required by the department. A new certificate shall be prepared in the name of the adopted person as decreed by the court, registering adopted parents' names. The new certificate shall be prepared on a delayed birth certificate form. The adoption decree is placed in a sealed file and shall not be subject to inspection except upon an order of the court.

Approved June 19, 2008

HB 1670 [HB 1670]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Removes the requirement for certification by the Department of NaturalResources before a sales and use tax exemption applies to the purchase or lease of certain items used to monitor water and air pollution

AN ACT to repeal section 144.030, RSMo, and to enact in lieu thereof one new section relating to sales tax exemptions for certain equipment.

SECTION
A. Enacting clause.
144.030. Exemptions from state and local sales and use taxes.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 144.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.030, to read as follows:

144.030. EXEMPTIONS FROM STATE AND LOCAL SALES AND USE TAXES. — 1. There is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.761 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.824, RSMo; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into

foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration law (sections 281.220 to 281.310, RSMo) which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

(2) Materials, manufactured goods, machinery and parts which when used in manufacturing, processing, compounding, mining, producing or fabricating become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, mining, producing or fabricating and which new personal property is intended to be sold ultimately for final use or consumption; and materials, including without limitation, gases and manufactured goods, including without limitation, slagging materials and firebrick, which are ultimately consumed in the manufacturing process by blending, reacting or interacting with or by becoming, in whole or in part, component parts or ingredients of steel products intended to be sold ultimately for final use or consumption;

(3) Materials, replacement parts and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property;

(4) Replacement machinery, equipment, and parts and the materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption; and machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state. For the purposes of this subdivision, a "material recovery processing plant" means a facility that has as its primary purpose the recovery of materials into a useable product or a different form which is used in producing a new product and shall include a facility or equipment which are used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but shall not include motor vehicles used on highways. For purposes of this section, the terms motor vehicle and highway shall have the same meaning pursuant to section 301.010, RSMo. Material recovery is not the reuse of materials within a manufacturing process or the use of a product previously recovered. The material recovery processing plant shall qualify under the provisions of this section regardless of ownership of the material being recovered;

(5) Machinery and equipment, and parts and the materials and supplies solely required for the installation or construction of such machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating plants in the state if such machinery and equipment is used directly in manufacturing, mining or fabricating a product which is intended to be sold ultimately for final use or consumption;

(6) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to the United States government or to any agency of the United States government;

(7) Animals or poultry used for breeding or feeding purposes;

(8) Newsprint, ink, computers, photosensitive paper and film, toner, printing plates and other machinery, equipment, replacement parts and supplies used in producing newspapers published for dissemination of news to the general public;

(9) The rentals of films, records or any type of sound or picture transcriptions for public commercial display;

(10) Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers;

(11) Railroad rolling stock for use in transporting persons or property in interstate commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or more or trailers used by common carriers, as defined in section 390.020, RSMo, in the transportation of persons or property;

(12) Electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, or a material recovery processing plant as defined in subdivision (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used or if the raw materials used in such processing contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo. There shall be a rebuttable presumption that the raw materials used in the primary manufacture of automobiles contain at least twenty-five percent recovered materials. For purposes of this subdivision, "processing" means any mode of treatment, act or series of acts performed upon materials to transform and reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

(13) Anodes which are used or consumed in manufacturing, processing, compounding, mining, producing or fabricating and which have a useful life of less than one year;

(14) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, **[**and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the air conservation commission which may uphold or reverse such action**]**;

(15) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, **[**and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the Missouri clean water commission which may uphold or reverse such action**]**;

(16) Tangible personal property purchased by a rural water district;

(17) All amounts paid or charged for admission or participation or other fees paid by or other charges to individuals in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or corporation;

(18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items, including samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples and all sales of medical oxygen, home respiratory equipment and accessories, hospital beds and accessories and ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment and, if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, all sales of scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and augmentative communication devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription drugs to individuals with disabilities;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities;

(20) All sales of aircraft to common carriers for storage or for use in interstate commerce and all sales made by or to not-for-profit civic, social, service or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or charitable functions and activities and all sales made to eleemosynary and penal institutions and industries of the state, and all sales made to any private not-for-profit institution of higher education not otherwise excluded pursuant to subdivision (19) of this subsection or any institution of higher education supported by public funds, and all sales made to a state relief agency in the exercise of relief functions and activities;

(21) All ticket sales made by benevolent, scientific and educational associations which are formed to foster, encourage, and promote progress and improvement in the science of agriculture and in the raising and breeding of animals, and by nonprofit summer theater organizations if such organizations are exempt from federal tax pursuant to the provisions of the Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any fair conducted by a county agricultural and mechanical society organized and operated pursuant to sections 262.290 to 262.530, RSMo;

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, RSMo, natural gas, propane, and electricity used by an eligible new generation cooperative or an eligible new generation processing entity as defined in section 348.432, RSMo, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which is:

(a) Used exclusively for agricultural purposes;

(b) Used on land owned or leased for the purpose of producing farm products; and

(c) Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail;

(23) Except as otherwise provided in section 144.032, all sales of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil for domestic use and in any city not within a county, all sales of metered or unmetered water service for domestic use:

(a) "Domestic use" means that portion of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not

within a county, metered or unmetered water service, which an individual occupant of a residential premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units, shall be deemed to be for domestic use. Each seller shall establish and maintain a system whereby individual purchases are determined as exempt or nonexempt;

(b) Regulated utility sellers shall determine whether individual purchases are exempt or nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file with and approved by the Missouri public service commission. Sales and purchases made pursuant to the rate classification "residential" and sales to and purchases made by or on behalf of the occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, shall be considered as sales made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. The seller's utility service rate classification and the provision of service thereunder shall be conclusive as to whether or not the utility must charge sales tax;

(c) Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, file a return and pay sales tax on that portion of nondomestic purchases. Each person making nondomestic purchases of services or property and who uses any portion of the services or property so purchased for domestic use, and each person making domestic purchases on behalf of occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, under a nonresidential utility service rate classification may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for credit or refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase. The person making such purchases on behalf of occupants of residential apartments or condominiums shall have standing to apply to the director of revenue for such credit or refund;

(24) All sales of handicraft items made by the seller or the seller's spouse if the seller or the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such sales do not constitute a majority of the annual gross income of the seller;

(25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local sales taxes on such excise taxes;

(26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire, on navigable rivers bordering on or located in part in this state, if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such river;

(27) All sales made to an interstate compact agency created pursuant to sections 70.370 to 70.441, RSMo, or sections 238.010 to 238.100, RSMo, in the exercise of the functions and activities of such agency as provided pursuant to the compact;

(28) Computers, computer software and computer security systems purchased for use by architectural or engineering firms headquartered in this state. For the purposes of this subdivision, "headquartered in this state" means the office for the administrative management of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

(29) All livestock sales when either the seller is engaged in the growing, producing or feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering or leasing of such livestock;

(30) All sales of barges which are to be used primarily in the transportation of property or cargo on interstate waterways;

(31) Electrical energy or gas, whether natural, artificial or propane, water, or other utilities which are ultimately consumed in connection with the manufacturing of cellular glass products or in any material recovery processing plant as defined in subdivision (4) of this subsection;

(32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or herbicides used in the production of crops, aquaculture, livestock or poultry;

(33) Tangible personal property and utilities purchased for use or consumption directly or exclusively in the research and development of agricultural/biotechnology and plant genomics products and prescription pharmaceuticals consumed by humans or animals;

(34) All sales of grain bins for storage of grain for resale;

(35) All sales of feed which are developed for and used in the feeding of pets owned by a commercial breeder when such sales are made to a commercial breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo;

(36) All purchases by a contractor on behalf of an entity located in another state, provided that the entity is authorized to issue a certificate of exemption for purchases to a contractor under the provisions of that state's laws. For purposes of this subdivision, the term "certificate of exemption" shall mean any document evidencing that the entity is exempt from sales and use taxes on purchases pursuant to the laws of the state in which the entity is located. Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's exemption certificate as evidence of the exemption. If the exemption certificate issued by the exempt entity to the contractor is later determined by the director of revenue to be invalid for any reason and the contractor has accepted the certificate in good faith, neither the contractor or the exempt entity shall be liable for the payment of any taxes, interest and penalty due as the result of use of the invalid exemption certificate. Materials shall be exempt from all state and local sales and use taxes when purchased by a contractor for the purpose of fabricating tangible personal property which is used in fulfilling a contract for the purpose of constructing, repairing or remodeling facilities for the following:

(a) An exempt entity located in this state, if the entity is one of those entities able to issue project exemption certificates in accordance with the provisions of section 144.062; or

(b) An exempt entity located outside the state if the exempt entity is authorized to issue an exemption certificate to contractors in accordance with the provisions of that state's law and the applicable provisions of this section;

(37) All sales or other transfers of tangible personal property to a lessor who leases the property under a lease of one year or longer executed or in effect at the time of the sale or other transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441, RSMo, or sections 238.010 to 238.100, RSMo;

(38) Sales of tickets to any collegiate athletic championship event that is held in a facility owned or operated by a governmental authority or commission, a quasi-governmental agency, a state university or college or by the state or any political subdivision thereof, including a municipality, and that is played on a neutral site and may reasonably be played at a site located outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that is not located on the campus of a conference member institution participating in the event;

(39) All purchases by a sports complex authority created under section 64.920, RSMo.

Approved June 19, 2008

HB 1678 [SS HB 1678]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding members of the military and their families

AN ACT to repeal sections 41.1010, 42.007, 160.053, 160.518, 168.021, 170.011, and 620.515, RSMo, and to enact in lieu thereof eleven new sections relating to members of the military and their families.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 41.1010, 42.007, 160.053, 160.518, 168.021, 170.011, and 620.515, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 41.1010, 42.007, 160.053, 160.518, 160.2000, 168.021, 170.011, 173.234, 173.900, 452.412 and 620.515, to read as follows:

41.1010. MISSOURI MILITARY PREPAREDNESS AND ENHANCEMENT COMMISSION ESTABLISHED, PURPOSE, MEMBERS, DUTIES. — 1. There is hereby established the "Missouri Military Preparedness and Enhancement Commission". The commission shall have as its purpose the design and implementation of measures intended to protect, retain, and enhance the present and future mission capabilities at the military posts or bases within the state. The commission shall consist of nine members:

(1) Five members to be appointed by the governor;

(2) Two members of the house of representatives, one appointed by the speaker of the house of representatives, and one appointed by the minority floor leader;

(3) Two members of the senate, one appointed by the president pro tempore, and one appointed by the minority floor leader;

(4) The director of the department of economic development or the director's designee, ex officio**;**

(5) The chairman of the Missouri veterans' commission or the chairman's designee, ex officio.

No more than three of the five members appointed by the governor shall be of the same political party. To be eligible for appointment by the governor, a person shall have demonstrated experience in economic development, the defense industry, military installation operation, environmental issues, finance, local government, or the use of air space for future military missions. Appointed members of the commission shall serve three-year terms, except that of the initial appointments made by the governor, two shall be for one-year terms, two shall be for two-year terms, and one shall be for a three-year term. No appointed member of the commission shall serve more than six years total. A vacancy occurs if a legislative member leaves office for any reason. Any vacancy on the commission shall be filled in the same manner as the original appointment.

2. Members of the commission shall be reimbursed for the actual and necessary expenses incurred in the discharge of the member's official duties.

3. A chair of the commission shall be selected by the members of the commission.

4. The commission shall meet at least quarterly and at such other times as the chair deems necessary.

5. The commission shall be funded by an appropriation limited to that purpose. Any expenditure constituting more than ten percent of the commission's annual appropriation shall be based on a competitive bid process.

6. The commission shall:

(1) Advise the governor and the general assembly on military issues and economic and industrial development related to military issues;

(2) Make recommendations regarding:

(a) Developing policies and plans to support the long-term viability and prosperity of the military, active and **retiree, and** civilian **military employees**, in this state, including promoting strategic regional alliances that may extend over state lines;

(b) Developing methods to improve private and public employment opportunities for former members of the military **and their families** residing in this state; and

(c) Developing methods to assist defense-dependent communities in the design and execution of programs that enhance a community's relationship with military installations and defense-related businesses;

(3) Provide information to communities, the general assembly, the state's congressional delegation, and state agencies regarding federal actions affecting military installations and missions;

(4) Serve as a clearinghouse for:

(a) Defense economic adjustment and transition information and activities; and

(b) Information concerning the following:

a. Issues related to the operating costs, missions, and strategic value of federal military installations located in the state;

b. Employment issues for communities that depend on defense bases and in defense-related businesses; and

c. Defense strategies and incentive programs that other states are using to maintain, expand, and attract new defense contractors;

(5) Provide assistance to communities that have experienced a defense-related closure or realignment;

(6) Assist communities in the design and execution of programs that enhance a community's relationship with military installations and defense-related businesses, including regional alliances that may extend over state lines;

(7) Assist communities in the retention and recruiting of defense-related businesses, including fostering strategic regional alliances that may extend over state lines;

(8) Prepare a biennial strategic plan that:

(a) Fosters the enhancement of military value of the contributions of Missouri military installations to national defense strategies;

(b) Considers all current and anticipated base realignment and closure criteria; and

(c) Develops strategies to protect the state's existing military missions and positions the state to be competitive for new and expanded military missions;

(9) Encourage economic development in this state by fostering the development of industries related to defense affairs.

7. The commission shall prepare and present an annual report to the governor and the general assembly by December thirty-first of each year.

8. The department of economic development shall furnish administrative support and staff for the effective operation of the commission.

42.007. MISSOURI VETERANS' COMMISSION ESTABLISHED IN THE DEPARTMENT OF PUBLIC SAFETY — MEMBERS, QUALIFICATIONS, APPOINTMENT, TERMS, VACANCIES, EXPENSES — OFFICERS, TERMS — MEETINGS — POWERS AND DUTIES, STAFF — VOLUNTEERS DEEMED UNPAID EMPLOYEES, CONSEQUENCES. — 1. There is hereby established within the department of public safety the "Missouri Veterans' Commission", such commission to be a type III agency within the department of public safety under the Omnibus State Reorganization Act of 1974. All duties and activities carried on by the division of veterans' affairs on August 28, 1989, shall be vested in such commission as provided by the Omnibus Reorganization Act of 1974.

2. The commission shall be composed of five members, who shall be veterans appointed by the governor, with the advice and consent of the senate, for a four-year term; except that initial appointments to the commission shall consist of two veterans to serve four-year terms, two veterans to serve three-year terms, and one veteran to serve a two-year term. **In addition, the chair of the Missouri military preparedness and enhancement commission or the chair's designee shall be an ex officio member of the commission.**

3. The governor shall make all appointments to the commission from lists of nominees recommended by each of the statewide veterans' organizations incorporated in this state, chartered by Congress, or authorized under Title 38, United States Code. Vacancies shall be filled by appointment made in the same manner as the original appointments. A member of the commission shall be a resident of the state of Missouri but shall not be an employee of the state. Members of the commission shall not be compensated for their services, but shall be reimbursed from funds appropriated therefor for actual and necessary expenses incurred in the performance of their duties.

4. The commission shall organize by electing one member as chairman and another as vice chairman. Such officers shall serve for a term of two years. The commission shall meet no fewer than four times per calendar year, at the call of the chairman, and at times and places established by the chairman by written notice. The commission's executive director shall serve as secretary to the commission.

5. The commission shall aid and assist all veterans and their dependents and legal representatives, **who are legal Missouri residents or** who live in the state of Missouri, in all matters relating to the rights of veterans under the laws of the United States and under the rules and regulations of federal agencies, boards, commissions and other authorities which are in any manner concerned with the interest and welfare of veterans and their dependents. In addition to any other duties imposed by sections 42.002 to 42.135 and section 143.1001, RSMo, the commission shall:

(1) Disseminate by all means available information concerning the rights of veterans and their dependents;

(2) Provide aid and assistance to all veterans, their dependents and legal representatives, in preparing, presenting and prosecuting claims for compensation, education, pensions, insurance benefits, hospitalization, rehabilitation and all other matters in which a veteran may have a claim against the United States or any state arising out of or connected with service in the military forces of the United States;

(3) Prosecute all claims listed in subdivision (2) of this subsection to conclusion, when so authorized and empowered by a veteran, his survivors or legal representatives;

(4) Cooperate with the United States Employment Service, the United States Department of Veterans' Affairs and all federal and state offices legally concerned with and interested in the welfare of veterans and their dependents;

(5) Arrange for and accept through such mutual arrangements as may be made, the volunteer services, equipment, facilities, properties, supplies, funds and personnel of all federal, welfare, civic and service organizations, and other organized groups and individuals which are in furtherance of the purposes of sections 42.002 to 42.135 and section 143.1001, RSMo;

(6) Volunteers shall be deemed unpaid employees and shall be accorded the protection of the legal expense fund and liability provisions. Reimbursement for transportation and other necessary expenses may be furnished to those volunteers whose presence on special assignment is determined to be necessary by the commission. Such expenses shall be reimbursed from the regular appropriations of the commission. Volunteers may utilize state vehicles in the performance of commission-related duties, subject to those rules and regulations governing use of state vehicles by paid staff;

(7) Establish, maintain and operate offices throughout this state as necessary to carry out the purposes of sections 42.002 to 42.135 and section 143.1001, RSMo;

(8) Provide to the executive director of the commission all appropriate authority for the execution of the duties of the commission under this chapter;

(9) Employ such staff as necessary for performance of the duties and purposes of this chapter.

160.053. CHILD ELIGIBLE FOR KINDERGARTEN AND SUMMER SCHOOL, WHEN — CHILD ELIGIBLE FOR FIRST GRADE, WHEN — STATE AID EXCEPTION. — 1. If a school district maintains a kindergarten program, a child is eligible for admission to kindergarten and to the summer school session immediately preceding kindergarten, if offered, if the child reaches the age of five before the first day of August of the school year beginning in that calendar year **or if the child is a military dependent who has successfully completed an accredited prekindergarten program or has attended an accredited kindergarten program in another state**. A child is eligible for admission to first grade if the child reaches the age of six before the first day of August of the school year beginning in that calendar year **or if the child is a military dependent who has successfully completed an accredited kindergarten program in another state**.

2. Any kindergarten or grade one pupil beginning the school term and any pupil beginning summer school prior to a kindergarten school term in a metropolitan school district or an urban school district containing the greater part of the population of a city which has more than three hundred thousand inhabitants pursuant to section 160.054 or 160.055 and subsequently transferring to another school district in this state in which the child's birth date would preclude such child's eligibility for entrance shall be deemed eligible for attendance and shall not be required to meet the minimum age requirements. The receiving school district shall receive state aid for the child, notwithstanding the provisions of section 160.051.

3. Any child who completes the kindergarten year shall not be required to meet the age requirements of a district for entrance into grade one.

4. The provisions of this section relating to kindergarten instruction and state aid therefor, shall not apply during any particular school year to those districts which do not provide kindergarten classes that year.

160.518. STATEWIDE ASSESSMENT SYSTEM, STANDARDS, RESTRICTION — EXEMPLARY LEVELS, OUTSTANDING SCHOOL WAIVERS — SUMMARY WAIVER OF PUPIL TESTING REQUIREMENTS — WAIVER VOID, WHEN — SCORES NOT COUNTED, WHEN — ALTERNATIVE ASSESSMENTS FOR SPECIAL EDUCATION STUDENTS — ADJUSTMENTS ADMINISTERED, WHEN

— WAIVERS OF RESOURCES AND PROCESS STANDARDS, WHEN. — 1. Consistent with the provisions contained in section 160.526, the state board of education shall develop a statewide assessment system that provides maximum flexibility for local school districts to determine the degree to which students in the public schools of the state are proficient in the knowledge, skills, and competencies adopted by such board pursuant to subsection 1 of section 160.514. The statewide assessment system shall assess problem solving, analytical ability, evaluation, creativity, and application ability in the different content areas and shall be performance-based to identify what students know, as well as what they are able to do, and shall enable teachers to evaluate actual academic performance. The assessment system shall neither promote nor prohibit rote memorization and shall not include existing versions of tests approved for use pursuant to the provisions of section 160.257, nor enhanced versions of such tests. The statewide assessment shall measure, where appropriate by grade level, a student's knowledge of academic subjects including, but not limited to, reading skills, writing skills, mathematics skills, world and American history, forms of government, geography and science.

2. The assessment system shall only permit the academic performance of students in each school in the state to be tracked against prior academic performance in the same school.

3. The state board of education shall suggest criteria for a school to demonstrate that its students learn the knowledge, skills and competencies at exemplary levels worthy of imitation by students in other schools in the state and nation. "Exemplary levels" shall be measured by the assessment system developed pursuant to subsection 1 of this section, or until said assessment is available, by indicators approved for such use by the state board of education. The provisions of other law to the contrary notwithstanding, the commissioner of education may, upon request of the school district, present a plan for the waiver of rules and regulations to any such school, to be known as "Outstanding Schools Waivers", consistent with the provisions of subsection 4 of this section.

4. For any school that meets the criteria established by the state board of education for three successive school years pursuant to the provisions of subsection 3 of this section, by August first following the third such school year, the commissioner of education shall present a plan to the superintendent of the school district in which such school is located for the waiver of rules and regulations to promote flexibility in the operations of the school and to enhance and encourage efficiency in the delivery of instructional services. The provisions of other law to the contrary notwithstanding, the plan presented to the superintendent shall provide a summary waiver, with no conditions, for the pupil testing requirements pursuant to section 160.257, in the school. Further, the provisions of other law to the contrary notwithstanding, the plan shall detail a means for the waiver of requirements otherwise imposed on the school related to the authority of the state board of education to classify school districts pursuant to subdivision (9) of section 161.092, RSMo, and such other rules and regulations as determined by the commissioner of education, excepting such waivers shall be confined to the school and not other schools in the district unless such other schools meet the criteria established by the state board of education consistent with subsection 3 of this section and the waivers shall not include the requirements contained in this section and section 160.514. Any waiver provided to any school as outlined in this subsection shall be void on June thirtieth of any school year in which the school fails to meet the criteria established by the state board of education consistent with subsection 3 of this section.

5. The score on any assessment test developed pursuant to this section or this chapter of any student for whom English is a second language shall not be counted until such time as such student has been educated for three full school years in a school in this state, or in any other state, in which English is the primary language.

6. The state board of education shall identify or, if necessary, establish one or more developmentally appropriate alternate assessments for students who receive special educational services, as that term is defined pursuant to section 162.675, RSMo. In the development of such alternate assessments, the state board shall establish an advisory panel consisting of a majority of active special education teachers and other education professionals as appropriate to research

available assessment options. The advisory panel shall attempt to identify preexisting developmentally appropriate alternate assessments but shall, if necessary, develop alternate assessments and recommend one or more alternate assessments for adoption by the state board. The state board shall consider the recommendations of the advisory council in establishing such alternate assessment or assessments. Any student who receives special educational services, as that term is defined pursuant to section 162.675, RSMo, shall be assessed by an alternate assessment established pursuant to this subsection upon a determination by the student's individualized education program team that such alternate assessment is more appropriate to assess the student's knowledge, skills and competencies than the assessment developed pursuant to subsection 1 of this section. The alternate assessment shall evaluate the student's independent living skills, which include how effectively the student addresses common life demands and how well the student meets standards for personal independence expected for someone in the student's age group, sociocultural background, and community setting.

7. **The state board of education shall also develop recommendations regarding alternate assessments for any military dependent who relocates to Missouri after the commencement of a school term, in order to accommodate such student while ensuring that he or she is proficient in the knowledge, skills, and competencies adopted under section 160.514.**

8. Notwithstanding the provisions of subsections 1 to **[**6**]** **7** of this section, no later than June 30, 2006, the state board of education shall administer the following adjustments to the statewide assessment system:

(1) Align the performance standards of the statewide assessment system so that such indicators meet, but do not exceed, the performance standards of the National Assessment of Education Progress (NAEP) exam;

(2) Institute yearly examination of students in the required subject areas where compelled by existing federal standards, as of August 28, 2004; and

(3) Administer any other adjustments that the state board of education deems necessary in order to aid the state in satisfying existing federal requirements, as of August 28, 2004, including, but not limited to, the requirements contained in the federal No Child Left Behind Act. Grade-level expectations shall be considered when the state board of education establishes performance standards.

[8.**]** **9.** By July 1, 2006, the state board of education shall examine its rules and regulations and revise them to permit waivers of resource and process standards based upon achievement of performance profiles consistent with accreditation status.

160.2000. TEXT OF COMPACT. — Interstate Compact on Educational Opportunity for Military Children

ARTICLE I
PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.

B. "Children of military families" means: a school-aged child(ren), enrolled in Kindergarten through Twelfth (12th) grade, in the household of an active duty member.

C. "Compact commissioner" means: the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. "Deployment" means: the period one (1) month prior to the service members' departure from their home station on military orders though six (6) months after return to their home station.

E. "Education(al) records" means: those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. "Extracurricular activities" means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. "Interstate Commission on Educational Opportunity for Military Children" means: the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

H. "Local education agency" means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth (12th) grade public educational institutions.

I. "Member state" means: a state that has enacted this compact.

J. "Military installation" means: means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. "Nonmember state" means: a state that has not enacted this compact.

L. "Receiving state" means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. "Rule" means: a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational,

procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. "State" means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory.

P. "Student" means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in Kindergarten through Twelfth (12th) grade.

Q. "Transition" means: 1) the formal and physical process of transferring from school to school or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. "Uniformed service(s)" means: the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

S. "Veteran" means: a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

ARTICLE III

APPLICABILITY

A. Except as otherwise provided in Section B, this compact shall apply to the children of:

1. active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211;

2. members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and

3. members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. inactive members of the national guard and military reserves;

2. members of the uniformed services now retired, except as provided in Section A;

3. veterans of the uniformed services, except as provided in Section A; and

4. other U.S. Dept. of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV

EDUCATIONAL RECORDS & ENROLLMENT

A. Unofficial or "hand-carried" education records - In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records/transcripts - Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this

request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations - Compacting states shall give thirty (30) days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunization(s) required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and First grade entrance age - Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

ARTICLE V

PLACEMENT & ATTENDANCE

A. Course placement - When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

B. Educational program placement - The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services - 1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 et seq, the receiving state shall initially provide comparable services to a student with disabilities based on his/her current Individualized Education Program (IEP); and 2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility - Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities - A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI
ELIGIBILITY

A. Eligibility for enrollment

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he/she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation - State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII
GRADUATION

In order to facilitate the on-time graduation of children of military families states and local education agencies shall incorporate the following procedures:

A. Waiver requirements - Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams - States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests or 3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her Senior year, then the provisions of Article VII, Section C shall apply.

C. Transfers during Senior year - Should a military student transferring at the beginning or during his or her Senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.

ARTICLE VIII
STATE COORDINATION

A. Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government,

local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

B. The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the State Council, unless either is already a full voting member of the State Council.

ARTICLE IX
INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children". The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex-officio, nonvoting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S. Dept. of Defense, shall serve as an ex-officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Public notice shall be given by the Interstate Commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by federal and state statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes; or

7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptible provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

I. The Interstate Commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. The Interstate Commission shall create a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

ARTICLE X

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;

2. Establishing an executive committee, and such other committees as may be necessary;

3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.

7. Providing "start up" rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers and Personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

b. Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.

2. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected

from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority - The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act", of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a Rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII
OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.

3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination - If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

7. The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The Interstate Commission, may by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV

FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall by audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV

MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI

WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact specifically repealing the statute, which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

168.021. ISSUANCE OF TEACHERS' LICENSES — EFFECT OF CERTIFICATION IN ANOTHER STATE AND SUBSEQUENT EMPLOYMENT IN THIS STATE. — 1. Certificates of license to teach in the public schools of the state shall be granted as follows:

(1) By the state board, under rules and regulations prescribed by it,

(a) Upon the basis of college credit;

(b) Upon the basis of examination;

(2) By the state board, under rules and regulations prescribed by the state board with advice from the advisory council established by section 168.015 to any individual who presents to the state board a valid doctoral degree from an accredited institution of higher education accredited by a regional accrediting association such as North Central Association. Such certificate shall be limited to the major area of postgraduate study of the holder, shall be issued only after successful completion of the examination required for graduation pursuant to rules adopted by the state board of education, and shall be restricted to those certificates established pursuant to subdivision (1) of subsection 3 of this section; or

(3) By the state board, which shall issue the professional certificate classification in both the general and specialized areas most closely aligned with the current areas of certification approved by the state board, commensurate with the years of teaching experience of the applicant, and based upon the following criteria:

(a) Recommendation of a state-approved baccalaureate-level teacher preparation program;

(b) Successful attainment of the Missouri qualifying score on the exit assessment for teachers or administrators designated by the state board of education. Applicants who have not successfully achieved a qualifying score on the designated examinations will be issued a two-year nonrenewable provisional certificate; and

(c) Upon completion of a background check and possession of a valid teaching certificate in the state from which the applicant's teacher preparation program was completed.

2. All valid teaching certificates issued pursuant to law or state board policies and regulations prior to September 1, 1988, shall be exempt from the professional development requirements of this section and shall continue in effect until they expire, are revoked or suspended, as provided by law. When such certificates are required to be renewed, the state board or its designee shall grant to each holder of such a certificate the certificate most nearly equivalent to the one so held. Anyone who holds, as of August 28, 2003, a valid PC-I, PC-II, or continuous professional certificate shall, upon expiration of his or her current certificate, be issued the appropriate level of certificate based upon the classification system established pursuant to subsection 3 of this section.

3. Certificates of license to teach in the public schools of the state shall be based upon minimum requirements prescribed by the state board of education. The state board shall provide for the following levels of professional certification: an initial professional certificate and a career continuous professional certificate.

(1) The initial professional certificate shall be issued upon completion of requirements established by the state board of education and shall be valid based upon verification of actual teaching within a specified time period established by the state board of education. The state board shall require holders of the four-year initial professional certificate to:

(a) Participate in a mentoring program approved and provided by the district for a minimum of two years;

(b) Complete thirty contact hours of professional development, which may include hours spent in class in an appropriate college curriculum; and

(c) Participate in a beginning teacher assistance program;

(2) (a) The career continuous professional certificate shall be issued upon verification of completion of four years of teaching under the initial professional certificate and upon verification of the completion of the requirements articulated in paragraphs (a), (b), and (c) of subdivision (1) of this subsection.

(b) The career continuous professional certificate shall be continuous based upon verification of actual employment in an educational position as provided for in state board guidelines and completion of fifteen contact hours of professional development per year which may include hours spent in class in an appropriate college curriculum. Should the possessor of a valid career continuous professional certificate fail, in any given year, to meet the fifteen-hour

professional development requirement, the possessor may, within two years, make up the missing hours. In order to make up for missing hours, the possessor shall first complete the fifteen-hour requirement for the current year and then may count hours in excess of the current year requirement as make-up hours. Should the possessor fail to make up the missing hours within two years, the certificate shall become inactive. In order to reactivate the certificate, the possessor shall complete twenty-four contact hours of professional development which may include hours spent in the classroom in an appropriate college curriculum within the six months prior to or after reactivating his or her certificate. The requirements of this paragraph shall be monitored and verified by the local school district which employs the holder of the career continuous professional certificate.

(c) A holder of a career continuous professional certificate shall be exempt from the professional development contact hour requirements of paragraph (b) of this subdivision if such teacher has a local professional development plan in place within such teacher's school district and meets two of the three following criteria:

a. Has ten years of teaching experience as defined by the state board of education;

b. Possesses a master's degree; or

c. Obtains a rigorous national certification as approved by the state board of education.

4. Policies and procedures shall be established by which a teacher who was not retained due to a reduction in force may retain the current level of certification. There shall also be established policies and procedures allowing a teacher who has not been employed in an educational position for three years or more to reactivate his or her last level of certification by completing twenty-four contact hours of professional development which may include hours spent in the classroom in an appropriate college curriculum within the six months prior to or after reactivating his or her certificate.

5. The state board shall, upon an appropriate background check, issue a professional certificate classification in the areas most closely aligned with an applicant's current areas of certification, commensurate with the years of teaching experience of the applicant, to any person who is hired to teach in a public school in this state and who possesses a valid teaching certificate from another state, provided that the certificate holder shall annually complete the state board's requirements for such level of certification, and shall establish policies by which residents of states other than the state of Missouri may be assessed a fee for a certificate license to teach in the public schools of Missouri. Such fee shall be in an amount sufficient to recover any or all costs associated with the issuing of a certificate of license to teach. **The board shall promulgate rules to authorize the issuance of a provisional certificate of license, which shall allow the holder to assume classroom duties pending the completion of a criminal background check under section 168.133, for any applicant who:**

(1) Is the spouse of a member of the armed forces stationed in Missouri;

(2) Relocated from another state within one year of the date of application;

(3) Underwent a criminal background check in order to be issued a teaching certificate of license from another state; and

(4) Otherwise qualifies under this section.

6. The state board may assess to holders of an initial professional certificate a fee, to be deposited into the excellence in education revolving fund established pursuant to section 160.268, RSMo, for the issuance of the career continuous professional certificate. However, such fee shall not exceed the combined costs of issuance and any criminal background check required as a condition of issuance.

7. Any member of the public school retirement system of Missouri who entered covered employment with ten or more years of educational experience in another state or states and held a certificate issued by another state and subsequently worked in a school district covered by the public school retirement system of Missouri for ten or more years who later became certificated in Missouri shall have that certificate dated back to his or her original date of employment in a Missouri public school.

170.011. COURSES IN THE CONSTITUTIONS, AMERICAN HISTORY AND MISSOURI GOVERNMENT, REQUIRED, PENALTY — WAIVER, WHEN — STUDENT AWARDS — REQUIREMENTS NOT APPLICABLE TO FOREIGN EXCHANGE STUDENTS. — 1. Regular courses of instruction in the Constitution of the United States and of the state of Missouri and in American history and institutions shall be given in all public and private schools in the state of Missouri, except privately operated trade schools, and shall begin not later than the seventh grade and continue in high school to an extent determined by the state commissioner of education, and shall continue in college and university courses to an extent determined by the state commissioner of higher education. In the 1990-91 school year and each year thereafter, local school districts maintaining high schools shall comply with the provisions of this section by offering in grade nine, ten, eleven, or twelve a course of instruction in the institutions, branches and functions of the government of the state of Missouri, including local governments, and of the government of the United States, and in the electoral process. A local school district maintaining such a high school shall require that prior to the completion of the twelfth grade each pupil, who receives a high school diploma or certificate of graduation on or after January 1, 1994, shall satisfactorily complete such a course of study. Such course shall be of at least one semester in length and may be two semesters in length. The department of elementary and secondary education may provide assistance in developing such a course if the district requests assistance. **A school district may elect to waive the requirements of this subsection for any student who transfers from outside the state to a Missouri high school if the student can furnish documentation deemed acceptable by the school district of the student's successful completion in any year from the ninth through the twelfth grade of a course of instruction in the institutions, branches, and functions of state government, including local governments, and of the government of the United States, and in the electoral process.**

2. American history courses at the elementary and secondary levels shall include in their proper time-line sequence specific referrals to the details and events of the racial equality movement that have caused major changes in United States and Missouri laws and attitudes.

3. No pupil shall receive a certificate of graduation from any public or private school other than private trade schools unless he has satisfactorily passed an examination on the provisions and principles of the Constitution of the United States and of the state of Missouri, and in American history and American institutions. **A school district may elect to waive the requirements of this subsection for any student who transfers from outside the state to a Missouri high school if the student can furnish documentation deemed acceptable by the school district of the student's successful completion in any year from the ninth through the twelfth grade of a course of instruction in the institutions, branches, and functions of state government, including local governments, and of the government of the United States, and in the electoral process.** A student of a college or university, who, after having completed a course of instruction prescribed in this section and successfully passed an examination on the United States Constitution, and in American history and American institutions required hereby, transfers to another college or university, is not required to complete another such course or pass another such examination as a condition precedent to his graduation from the college or university.

4. In the 1990-91 school year and each year thereafter, each school district maintaining a high school may annually nominate to the state board of education a student who has demonstrated knowledge of the principles of government and citizenship through academic achievement, participation in extracurricular activities, and service to the community. Annually, the state board of education shall select fifteen students from those nominated by the local school districts and shall recognize and award them for their academic achievement, participation and service.

5. **[**The state commissioner of education and the state commissioner of higher education shall make arrangements for carrying out the provisions of this section and prescribe a list of suitable texts adapted to the needs of the school grades and college courses, respectively.

6. The willful neglect of any superintendent, principal or teacher to observe and carry out the requirements of this section is sufficient cause for termination of his contract.

7.] The provisions of this section shall not apply to students from foreign countries who are enrolled in public or private high schools in Missouri, if such students are foreign exchange students sponsored by a national organization recognized by the department of elementary and secondary education.

173.234. DEFINITIONS — GRANTS TO BE AWARDED, WHEN, DURATION — DUTIES OF THE BOARD — RULEMAKING AUTHORITY — ELIGIBILITY CRITERIA — SUNSET PROVISION. — 1. As used in this section, unless the context clearly requires otherwise, the following terms mean:

(1) "Board", the coordinating board for higher education;

(2) "Books", any books required for any course for which tuition was paid by a grant awarded under this section;

(3) "Grant", the war veteran's survivors grant as established in this section;

(4) "Institution of postsecondary education", any approved Missouri public institution of postsecondary education, as defined in section 173.205;

(5) "Survivor", a child or spouse of a war veteran;

(6) "Tuition", any tuition or incidental fee, or both, charged by an institution of postsecondary education for attendance at the institution by a student as a resident of this state. The tuition grant shall not exceed the amount of tuition charged a Missouri resident at the University of Missouri-Columbia for attendance;

(7) "War veteran", a person who served in armed combat in the military and to whom the following criteria shall apply:

(a) The veteran was a Missouri resident when first entering the military service and at the time of death or injury; and

(b) The veteran dies as a result of combat action or the veteran's death was certified by a Veterans' Administration medical authority to be attributable to an illness that was contracted while serving in combat, or who became eighty percent disabled as a result of injuries or accidents sustained in combat action.

2. Within the limits of the amounts appropriated therefor, the coordinating board for higher education shall award annually up to twenty-five grants to survivors of war veterans to attend institutions of postsecondary education in this state, which shall continue to be awarded annually to eligible recipients as long as the recipient achieves and maintains a cumulative grade point average of at least two and one-half on a four point scale, or its equivalent. If the waiting list of eligible survivors exceeds fifty, the coordinating board may petition the general assembly to expand the quota. If the quota is not expanded, then the eligibility of survivors on the waiting list shall be extended.

3. A survivor may receive a grant under this section only so long as the survivor is enrolled in a program leading to a certificate, or an associate or baccalaureate degree. In no event shall a survivor receive a grant beyond the completion of the first baccalaureate degree, regardless of age.

4. The coordinating board for higher education shall:

(1) Promulgate all necessary rules and regulations for the implementation of this section; and

(2) Provide the forms and determine the procedures necessary for a survivor to apply for and receive a grant under this section.

5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,

to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

6. In order to be eligible to receive a grant under this section, a survivor shall be certified as eligible by the Missouri veterans' commission. In the case of an illness-related death, such certification shall be made upon qualified medical certification by a Veterans' Administration medical authority that the illness was both a direct result of the veteran's combat service and a substantial factor in the cause of the resulting death of the veteran.

7. A survivor who is enrolled or has been accepted for enrollment as an undergraduate postsecondary student at an approved institution of postsecondary education, and who is selected to receive a grant under this section, shall receive the following:

(1) An amount not to exceed the actual tuition charged at the approved institution of postsecondary education where the survivor is enrolled or accepted for enrollment;

(2) An allowance of up to two thousand dollars per semester for room and board; and

(3) The actual cost of books, up to a maximum of five hundred dollars per semester.

8. A survivor who is a recipient of a grant may transfer from one approved public institution of postsecondary education to another without losing his or her entitlement under this section. The board shall make necessary adjustments in the amount of the grant. If a grant recipient at any time withdraws from the institution of postsecondary education so that under the rules and regulations of that institution he or she is entitled to a refund of any tuition, fees, room and board, books, or other charges, the institution shall pay the portion of the refund to which he or she is entitled attributable to the grant for that semester or similar grading period to the board.

9. If a survivor is granted financial assistance under any other student aid program, public or private, the full amount of such aid shall be reported to the board by the institution and the eligible survivor.

10. Nothing in this section shall be construed as a promise or guarantee that a person will be admitted to an institution of postsecondary education or to a particular institution of postsecondary education, will be allowed to continue to attend an institution of postsecondary education after having been admitted, or will be graduated from an institution of postsecondary education.

11. The benefits conferred by this section shall be available to any academically qualified surviving spouse or children of war veterans. Surviving children who are eligible shall be permitted to apply for full benefits conferred by this section until they reach twenty-five years of age.

12. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall sunset automatically six years after the effective date of this section unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall sunset automatically twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

173.900. COMBAT VETERAN DEFINED — TUITION LIMIT FOR COMBAT VETERANS, PROCEDURE. — 1. This act shall be known and may be cited as the "Missouri Returning Heroes' Education Act".

2. For the purpose of this section, the term "combat veteran" shall mean a person who served in armed combat in the military after September 11, 2001, and to whom the following criteria shall apply:

(1) The veteran was a Missouri resident when first entering the military; and

(2) The veteran was discharged from military service under honorable conditions.

3. All public institutions of higher education that receive any state funds appropriated by the general assembly shall limit the amount of tuition such institutions charge to combat veterans to fifty dollars per credit hour, as long as the veteran achieves and maintains a cumulative grade point average of at least two and one-half on a four point scale, or its equivalent. The tuition limitation shall only be applicable if the combat veteran is enrolled in a program leading to a certificate, or an associate or baccalaureate degree. The period during which a combat veteran is eligible for a tuition limitation under this section shall expire at the end of the ten-year period beginning on the date of such veteran's last discharge from service.

4. The coordinating board for higher education shall ensure that all applicable institutions of higher education in this state comply with the provisions of this section and may promulgate rules for the efficient implementation of this section.

5. If a combat veteran is eligible to receive financial assistance under any other federal or state student aid program, public or private, the full amount of such aid shall be reported to the board by the institution and the veteran. The tuition limitation under this section shall be provided after all other federal and state aid for which the veteran is eligible has been applied, and no combat veteran shall receive more than the actual cost of attendance when the limitation is combined with other aid made available to such veteran.

6. Each institution may report to the board the amount of tuition waived in the previous fiscal year under the provisions of this act. This information may be included in each institution's request for appropriations to the board for the following year. The board may include this information in its appropriations recommendations to the governor and the general assembly. The general assembly may reimburse institutions for the cost of the waiver for the previous year as part of the operating budget. Nothing in this subsection shall be construed to deny a combat veteran a tuition limitation if the general assembly does not appropriate money for reimbursement to an institution.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

452.412. MILITARY SERVICE OF PARENT NOT TO BE A BASIS FOR MODIFICATION OF A VISITATION OR CUSTODY ORDER. — A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the party's activation to military service and deployment out-of-state.

620.515. HERO AT HOME PROGRAM ESTABLISHED TO ASSIST MEMBERS OF THE NATIONAL GUARD AND THEIR FAMILIES — REPORT TO GENERAL ASSEMBLY. — 1. This section shall be known and may be cited as the "**[**Guard**] Hero** at Home" program **[**whose**] , the** purpose **of which** is to:

(1) Assist the spouse of an active duty national guard or reserve component service member reservist to address immediate needs and employment in an attempt to keep the family from falling into poverty while the primary income earner is on active duty**, and during the one-year period following discharge from deployment**; and

(2) Assist returning national guard troops **or reserve component service member reservists** with finding work in situations where an individual needs to rebuild business clientele or where an individual's job has been eliminated while such individual was deployed**, or where the individual otherwise cannot return to his or her previous employment**.

2. Subject to appropriation, the department of economic development shall **[**enter**]** **operate the hero at home program through existing programs or by entering** into a contract with qualified providers through local workforce investment boards **[**to provide the guard at home program. The department shall develop the criteria of the contract**]** **. Eligibility for the program shall be** based on the following criteria:

(1) Eligible participants in the program shall be those families where:

(a) The primary income earner was called to active duty in defense of the United States for a period of more than four months;

(b) The family's primary income is no longer available;

(c) The family is experiencing significant hardship due to financial burdens; and

(d) The family has no outside resources available to assist with such hardships;

(2) Services that may be provided to the family will be aimed at ameliorating the immediate crisis and providing a path for economic stability while the primary income is not available due to the active military commitment. **Services shall be made available up to one year following discharge from deployment.** Services may include, but not be limited to the following:

(a) Financial assistance to families facing financial crisis from overdue bills due to reduced income after the deployment of a spouse;

(b) Help paying day care costs to pursue training and or employment;

(c) Help covering the costs of transportation to training and or employment;

(d) Vocational evaluation and vocational counseling to help the individual choose a visible employment goal;

(e) Vocational training to acquire or upgrade skills needed to be marketable in the workforce;

(f) Paid internships and subsidized employment to train on the job; and

(g) Job placement assistance for those who don't require skills training;

(3) The department shall ensure the eligible providers are:

(a) Community-based not-for-profit agencies which have significant experience in job training, placement, and social services;

(b) Providers with extensive experience providing such services to veterans and implementing contracts with veteran organizations such as the department of veteran affairs;

(c) Providers which have attained the distinction of being accredited through a national accreditation body for training and or human services;

(d) Providers which are able to provide a twenty percent match to the program either through indirect or direct expenditures; and

(e) Providers with experience in the regions targeted for the program.

3. The department shall structure **[**the**]** **any** contract such that payment will be based on delivering the services described in this section as well as performance to guarantee the greatest possible effectiveness of the program.

4. Because of the important nature of this program to the health and welfare of Missourians, this section shall become effective on July 1, 2006. The department shall make every reasonable effort to ensure that the **[**guard**]** **hero** at home program is serving families by August 1, 2006.

5. The department shall prepare a report on the operations and progress of the program to be delivered to the speaker of the house of representatives and the president pro tem of the senate no later than January 1, 2007.

Approved June 11, 2008

HB 1690 [SCS HCS HB 1690]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Allows the Director of the Department of Insurance, Financial Institutions, and Professional Registration to establish rules for submitting required insurance-related filings

AN ACT to repeal section 379.118, RSMo, and to enact in lieu thereof three new sections relating to the transmission of insurance-related information in specific formats.

SECTION
A. Enacting clause.
374.056. Rulemaking authority, delivery methods.
374.057. Filing of records and signatures authorized when in compliance with federal law.
379.118. Notice of cancellation and renewals, due when.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 379.118, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 374.056, 374.057, and 379.118, to read as follows:

374.056. RULEMAKING AUTHORITY, DELIVERY METHODS. — Except as limited by section 375.922, RSMo, the director may promulgate rules establishing the specific type of delivery method for submissions of rate and form filings, rules, license applications, including materials requested in the course of a financial or market conduct examination, which are required to be submitted to the department under state law. Types of delivery methods shall be web-based interface systems such as the System for Electronic Rate Form Filing (SERFF), the National Insurance Producer Registry (NIPR), and the National Association of Insurance Commissioners' Internet-State Interface Technology Enhancement (I-SITE). Such rules may only apply to insurance companies, producers, health maintenance organizations, and any other person or entity regulated by the department under this chapter, and chapters 287, 325, 354, and 375 to 385, RSMo, or a rule adopted thereunder. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

374.057. FILING OF RECORDS AND SIGNATURES AUTHORIZED WHEN IN COMPLIANCE WITH FEDERAL LAW. — The filing of records and signatures is authorized, when specified under this chapter, or chapters 287, 325, 354, and 375 to 385, RSMo, or a rule adopted

thereunder, when carried out in a manner consistent with Section 104(a) of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7004(a). This section modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001(c), or authorize the electronic delivery of any of the notices described in Section 103(b) of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7003(b).

379.118. NOTICE OF CANCELLATION AND RENEWALS, DUE WHEN. — 1. If any insurer proposes to cancel or to refuse to renew a policy of automobile insurance delivered or issued for delivery in this state except at the request of the named insured or for nonpayment of premium, it shall, on or before thirty days prior to the proposed effective date of the action, send written notice by certificate of mailing of its intended action to the named insured at his last known address. The notice shall state:

(1) The proposed action to be taken;

(2) The proposed effective date of the action;

(3) The insurer's actual reason for proposing to take such action, the statement of reason to be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morals", or "violation or accident record" shall not suffice to meet the requirements of this subdivision;

(4) That the insured may be eligible for insurance through the assigned risk plan if his insurance is to be canceled.

2. An insurer shall send an insured written notice of an automobile policy renewal at least fifteen days prior to the effective date of the new policy. The notice shall be sent by first class mail **or may be sent electronically if requested by the policyholder,** and shall contain the insured's name, the vehicle covered, the total premium amount, and the effective date of the new policy. **Any request for electronic delivery of renewal notices shall be designated on the application form signed by the applicant, made in writing by the policyholder, or made in accordance with sections 432.200 to 432.295, RSMo. The insurer shall comply with any subsequent request by a policyholder to rescind authorization for electronic delivery and to elect to receive renewal notices by first class mail. Any delivery of a renewal notice by electronic means shall not constitute notice of cancellation of a policy even if such notice is included with the renewal notice.**

Approved June 19, 2008

HB 1710 [HB 1710]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding disability benefits for the Police Retirement System of Kansas City and the Civilian Employees' Retirement System of the Police Department of Kansas City

AN ACT to repeal sections 86.1180, 86.1200, and 86.1560, RSMo, and section 86.1230 as enacted by senate bill no. 172, ninety-fourth general assembly, first regular session, and section 86.1230 as enacted by conference committee substitute no. 2 for house committee

substitute no. 2 for senate bill no. 406, ninety-fourth general assembly, first regular session, and to enact in lieu thereof four new sections relating to police retirement.

SECTION
A. Enacting clause.
86.1180. Permanent disability caused by performance of duty, retirement by board of police commissioners permitted — base pension amount — certification of disability.
86.1200. Permanent disability not caused by performance of duty, ten years of creditable service, retirement permitted — base pension amount — certification of disability.
86.1230. Supplemental retirement benefits, amount — member to be special consultant, compensation.
86.1230. Supplemental retirement benefits, amount — member to be special consultant, compensation.
86.1560. Disability retirement pension, amount — definitions — board to determine disability, proof may be required.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 86.1180, 86.1200, and 86.1560, RSMo, and section 86.1230 as enacted by senate bill no. 172, ninety-fourth general assembly, first regular session, and section 86.1230 as enacted by conference committee substitute no. 2 for house committee substitute no. 2 for senate bill no. 406, ninety-fourth general assembly, first regular session, are repealed and four new sections enacted in lieu thereof, to be known as sections 86.1180, 86.1200, 86.1230, and 86.1560, to read as follows:

86.1180. PERMANENT DISABILITY CAUSED BY PERFORMANCE OF DUTY, RETIREMENT BY BOARD OF POLICE COMMISSIONERS PERMITTED — BASE PENSION AMOUNT — CERTIFICATION OF DISABILITY. — 1. Any member **in active service** who is permanently unable to perform the full and unrestricted duties of a police officer as the natural, proximate, and exclusive result of an accident occurring within the actual performance of duty at some definite time and place or through an occupational disease arising exclusively out of and in the course of his or her employment shall be retired by the board of police commissioners upon certification by one or more physicians of the medical board that the member is mentally or physically unable to perform the full and unrestricted duties of a police officer, that the inability is permanent or likely to become permanent, and that the member should be retired. The inability to perform the full and unrestricted duties of a police officer means that the member is unable to perform all the essential job functions for the position of police officer as established by the board of police commissioners.

2. Upon such retirement on or after August 28, 2001, a member shall receive a base pension equal to seventy-five percent of his or her final compensation for so long as the permanent disability shall continue, during which time such member shall for purposes of this section be referred to as a disability beneficiary. Such pension may be subject to offset or reduction under section 86.1190 by amounts paid or payable under any workers' compensation law.

3. Once each year during the first five years following his or her retirement, and at least once in every three-year period thereafter, the retirement board may, and upon the member's application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination at a place designated by the medical board or some member thereof. If any disability beneficiary who has not attained the age of sixty years refuses to submit to a medical examination his or her disability pension may be discontinued until his or her withdrawal of such refusal, and if his or her refusal continues for one year, all rights in and to such pension may be revoked by the retirement board.

4. If one or more members of the medical board certify to the retirement board that a disability beneficiary is able to perform the full and unrestricted duties of a police officer, and if the retirement board concurs on the report, then such beneficiary's disability pension shall cease.

5. If upon cessation of a disability pension under subsection 4 of this section, the former disability beneficiary is restored to active service, such member shall contribute to this retirement system thereafter at the same rate as other members. Upon subsequent retirement, such member shall be credited with all his or her creditable service, including any years in which such member received a disability pension under this section.

6. If upon cessation of a disability pension under subsection 4 of this section, the former disability beneficiary is not restored to active service, such member shall be entitled to the retirement benefit to which such member would have been entitled if such member had terminated service at the time of such cessation of the disability pension. For the purpose of such retirement benefits, such former disability beneficiary will be credited with all his or her creditable service, including any years in which such member received a disability pension under this section.

86.1200. PERMANENT DISABILITY NOT CAUSED BY PERFORMANCE OF DUTY, TEN YEARS OF CREDITABLE SERVICE, RETIREMENT PERMITTED — BASE PENSION AMOUNT — CERTIFICATION OF DISABILITY. — 1. Any member **in active service** who has completed ten or more years of creditable service and who has become permanently unable to perform the full and unrestricted duties of a police officer as the result of an injury or illness not exclusively caused or induced by the actual performance of his or her official duties or by his or her own negligence shall be retired by the board of police commissioners upon certification by one or more physicians of the medical board of the retirement board that the member is mentally or physically unable to perform the full and unrestricted duties of a police officer, that the inability is permanent or likely to become permanent, and that the member should be retired. The inability to perform the full and unrestricted duties of a police officer means that the member is unable to perform all the essential job functions for the position of police officer as established by the board of police commissioners.

2. Upon such retirement on or after August 28, 2001, a member shall receive a base pension equal to two and one-half percent of final compensation multiplied by the number of years of creditable service. Such pension shall be paid for so long as the permanent disability shall continue, during which time such member shall for purposes of this section be referred to as a nonduty disability beneficiary.

3. Once each year during the first five years following such member's retirement, and at least once in every three-year period thereafter, the retirement board may, and upon the member's application shall, require any nonduty disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination at a place designated by the medical board. If any nonduty disability beneficiary who has not attained the age of sixty years refuses to submit to a medical examination, his or her nonduty disability pension may be discontinued until his or her withdrawal of such refusal, and if his or her refusal continues for one year, all rights in and to such pension may be revoked by the retirement board.

4. If one or more members of the medical board certify to the retirement board that a nonduty disability beneficiary is able to perform the full and unrestricted duties of a police officer, and if the retirement board concurs in the report, then such beneficiary's nonduty disability pension shall cease.

[86.1230. SUPPLEMENTAL RETIREMENT BENEFITS, AMOUNT — MEMBER TO BE SPECIAL CONSULTANT, COMPENSATION. — 1. Any member who retires subsequent to August 28, 1991, with entitlement to a pension under sections 86.900 to 86.1280, shall receive each month, in addition to such member's base pension and cost-of-living adjustments thereto under section 86.1220, and in addition to any other compensation or benefit to which such member may be entitled under sections 86.900 to 86.1280, a supplemental retirement benefit of fifty dollars per month. The amount of such supplemental retirement benefit may be adjusted by cost-of-living adjustments determined by the retirement board not more frequently than annually.

2. Any member who was retired on or before August 28, 1991, and is receiving retirement benefits from the retirement system shall, upon application to the retirement board, be retained as a consultant, and for such services such member shall receive each month, in addition to such member's base pension and cost-of-living adjustments thereto under section 86.1220, and in addition to any other compensation or benefit to which such member may be entitled under sections 86.900 to 86.1280, a supplemental compensation in the amount of fifty dollars per month. This appointment as a consultant shall in no way affect any member's eligibility for retirement benefits under the provisions of sections 86.900 to 86.1280, or in any way have the effect of reducing retirement benefits otherwise payable to such member. The amount of such supplemental compensation under this subsection may be adjusted by cost-of-living adjustments determined by the retirement board not more frequently than annually.

3. For purposes of subsections 1 and 2 of this section, the term "member" shall include a surviving spouse entitled to a benefit under sections 86.900 to 86.1280 who shall be deemed to have retired for purposes of this section on the date of retirement of the member of whom such person is the surviving spouse or on the date of death of such member if such member died prior to retirement; provided, that if the surviving spouse of any member who retired prior to August 28, 2000, shall not have remarried prior to August 28, 2000, but remarries thereafter, such surviving spouse shall thereafter receive benefits under subsection 2 of this section, and provided further, that no benefits shall be payable under this section to the surviving spouse of any member who retired prior to August 28, 2000, if such surviving spouse was at any time remarried after the member's death and prior to August 28, 2000. All benefits payable to a surviving spouse under this section shall be in addition to all other benefits to which such surviving spouse may be entitled under other provisions of sections 86.900 to 86.1280. Any such surviving spouse of a member who dies while entitled to payments under this section shall succeed to the full amount of payment under this section to which such member was entitled at the time of such member's death, including any cost-of-living adjustments received by such member in the payment under this section prior to such member's death. In all events, the term "member" shall not include any children of the member who would be entitled to receive part or all of the pension which would be received by a surviving spouse if living.

4. Any member who is receiving benefits from the retirement system and who either was retired under the provisions of subsection 1 of section 86.1150, or who retired before August 28, 2001, under the provisions of section 86.1180 or section 86.1200, shall, upon application to the retirement board, be retained as a consultant. For such services such member shall receive each month in addition to such member's base pension and cost-of-living adjustments thereto under section 86.1220, and in addition to any other compensation or benefit to which such member may be entitled under sections 86.900 to 86.1280, an equalizing supplemental compensation of ten dollars per month. This appointment as a consultant shall in no way affect any member's eligibility for retirement benefits under the provisions of sections 86.900 to 86.1280, or in any way have the effect of reducing retirement benefits otherwise payable to such member. The amount of equalizing supplemental compensation under this subsection may be adjusted by cost-of-living adjustments, determined by the retirement board not more frequently than annually, but in no event shall the aggregate of such equalizing supplemental compensation together with all such cost-of-living adjustments thereto exceed twenty-five percent of the member's base pension. Each cost-of-living adjustment to compensation under this subsection shall be determined independently of any cost-of-living adjustment to any other benefit under sections 86.900 to 86.1280. For the purposes of this subsection, the term "member" shall include a surviving spouse entitled to benefits under the provisions of sections 86.900 to 86.1280, and who is the surviving spouse of a member who qualified, or would have qualified if living, for compensation under this subsection. Such surviving spouse shall, upon application to the retirement board, be retained as a consultant, and for such services shall be compensated in an amount equal to the compensation which would have been received by the member under this subsection, if living. Any such surviving spouse of a member who dies while entitled to payments under this

subsection shall succeed to the full amount of payment under this subsection to which such member was entitled at the time of such member's death, including any cost-of-living adjustments received by such member in the payment under this subsection prior to such member's death. In all events, the term "member" shall not include any children of the member who would be entitled to receive part or all of the pension that would be received by a surviving spouse, if living.

5. A surviving spouse who is entitled to benefits under the provisions of subsection 1 of section 86.1240 as a result of the death prior to August 28, 2007, of a member in service, and who is receiving benefits from the retirement system, shall, upon application to the retirement board, be retained as a special consultant, and for such services such surviving spouse shall receive each month an equalizing supplemental compensation of ten dollars per month. A surviving spouse entitled to benefits under the provisions of subsection 1 of section 86.1240 as a result of the death of a member in service on or after August 28, 2008, shall receive each month an equalizing supplemental benefit of ten dollars per month. All benefits payable to a surviving spouse under this subsection shall be in addition to all other benefits to which such surviving spouse may be entitled under other provisions of sections 86.900 to 86.1280 and shall in no way have the effect of reducing benefits otherwise payable to such surviving spouse. The amount of equalizing supplemental benefit or equalizing supplemental compensation under this subsection may be adjusted by cost-of-living adjustments, determined by the retirement board not more frequently than annually, but in no event shall the aggregate of such equalizing supplemental benefit or compensation together with all such cost-of-living adjustments thereto exceed twenty-five percent of the base pension of the surviving spouse. Each cost-of-living adjustment to an equalizing supplemental benefit or compensation under this subsection shall be determined independently of any cost-of-living adjustment to any other benefit under sections 86.900 to 86.1280. In all events the term "surviving spouse" as used in this subsection shall not include any children of the member who would be entitled to receive part or all of the pension that would be received by a surviving spouse, if living.

6. In determining and granting the cost-of-living adjustments under this section, the retirement board shall adopt such rules and regulations as may be necessary to effectuate the purposes of this section, including provisions for the manner of computation of such adjustments and the effective dates thereof. The retirement board shall provide for such adjustments to be determined once each year and granted on a date or dates to be chosen by the board. The retirement board shall not be required to prorate the initial adjustment to any benefit or compensation under this section for any member.

7. The determination of whether the retirement system will remain actuarially sound shall be made at the time any cost-of-living adjustment under this section is granted. If at any time the retirement system ceases to be actuarially sound, any benefit compensation payments provided under this section shall continue as adjusted by increases or decreases theretofore granted. A member of the retirement board shall have no personal liability for granting increases under this section if that retirement board member in good faith relied and acted upon advice of a qualified actuary that the retirement system would remain actuarially sound.]

86.1230. SUPPLEMENTAL RETIREMENT BENEFITS, AMOUNT — MEMBER TO BE SPECIAL CONSULTANT, COMPENSATION. — 1. Any member who retires subsequent to August 28, 1991, with entitlement to a pension under sections 86.900 to 86.1280, shall receive each month, in addition to such member's base pension and cost-of-living adjustments thereto under section 86.1220, and in addition to any other compensation or benefit to which such member may be entitled under sections 86.900 to 86.1280, a supplemental retirement benefit of fifty dollars per month. The amount of such supplemental retirement benefit may be adjusted by cost-of-living adjustments determined by the retirement board not more frequently than annually.

2. Any member who was retired on or before August 28, 1991, and is receiving retirement benefits from the retirement system shall, upon application to the retirement board, be retained

as a consultant, and for such services such member shall receive each month, in addition to such member's base pension and cost-of-living adjustments thereto under section 86.1220, and in addition to any other compensation or benefit to which such member may be entitled under sections 86.900 to 86.1280, a supplemental compensation in the amount of fifty dollars per month. This appointment as a consultant shall in no way affect any member's eligibility for retirement benefits under the provisions of sections 86.900 to 86.1280, or in any way have the effect of reducing retirement benefits otherwise payable to such member. The amount of such supplemental compensation under this subsection may be adjusted by cost-of-living adjustments determined by the retirement board not more frequently than annually.

3. For purposes of subsections 1 and 2 of this section, the term "member" shall include a surviving spouse entitled to a benefit under sections 86.900 to 86.1280 who shall be deemed to have retired for purposes of this section on the date of retirement of the member of whom such person is the surviving spouse or on the date of death of such member if such member died prior to retirement; provided, that if the surviving spouse of any member who retired prior to August 28, 2000, shall not have remarried prior to August 28, 2000, but remarries thereafter, such surviving spouse shall thereafter receive benefits under subsection 2 of this section, and provided further, that no benefits shall be payable under this section to the surviving spouse of any member who retired prior to August 28, 2000, if such surviving spouse was at any time remarried after the member's death and prior to August 28, 2000. All benefits payable to a surviving spouse under this section shall be in addition to all other benefits to which such surviving spouse may be entitled under other provisions of sections 86.900 to 86.1280. Any such surviving spouse of a member who dies while entitled to payments under this section shall succeed to the full amount of payment under this section to which such member was entitled at the time of such member's death, including any cost-of-living adjustments received by such member in the payment under this section prior to such member's death. In all events, the term "member" shall not include any children of the member who would be entitled to receive part or all of the pension which would be received by a surviving spouse if living.

4. Any member who is receiving benefits from the retirement system and who either was retired under the provisions of subdivision (1) of subsection 1 of section 86.1150, or who retired before August 28, 2001, under the provisions of section 86.1180 or section 86.1200, shall, upon application to the retirement board, be retained as a consultant. For such services such member shall receive each month in addition to such member's base pension and cost-of-living adjustments thereto under section 86.1220, and in addition to any other compensation or benefit to which such member may be entitled under sections 86.900 to 86.1280, an equalizing supplemental compensation of ten dollars per month. This appointment as a consultant shall in no way affect any member's eligibility for retirement benefits under the provisions of sections 86.900 to 86.1280, or in any way have the effect of reducing retirement benefits otherwise payable to such member. The amount of equalizing supplemental compensation under this subsection may be adjusted by cost-of-living adjustments, determined by the retirement board not more frequently than annually, but in no event shall the aggregate of such equalizing supplemental compensation together with all such cost-of-living adjustments thereto exceed twenty-five percent of the member's base pension. Each cost-of-living adjustment to compensation under this subsection shall be determined independently of any cost-of-living adjustment to any other benefit under sections 86.900 to 86.1280. For the purposes of this subsection, the term "member" shall include a surviving spouse entitled to benefits under the provisions of sections 86.900 to 86.1280, and who is the surviving spouse of a member who qualified, or would have qualified if living, for compensation under this subsection. Such surviving spouse shall, upon application to the retirement board, be retained as a consultant, and for such services shall be compensated in an amount equal to the compensation which would have been received by the member under this subsection, if living. Any such surviving spouse of a member who dies while entitled to payments under this subsection shall succeed to the full amount of payment under this subsection to which such member was entitled at the time of such

member's death, including any cost-of-living adjustments received by such member in the payment under this subsection prior to such member's death. In all events, the term "member" shall not include any children of the member who would be entitled to receive part or all of the pension that would be received by a surviving spouse, if living.

5. A surviving spouse who is entitled to benefits under the provisions of subsection 1 of section 86.1240 as a result of the death prior to August 28, 2007, of a member in service, and who is receiving benefits from the retirement system, shall, upon application to the retirement board, be retained as a consultant, and for such services such surviving spouse shall receive each month an equalizing supplemental compensation of ten dollars per month. A surviving spouse entitled to benefits under the provisions of subsection 1 of section 86.1240 as a result of the death of a member in service on or after August 28, 2007, shall receive each month an equalizing supplemental benefit of ten dollars per month. All benefits payable to a surviving spouse under this subsection shall be in addition to all other benefits to which such surviving spouse may be entitled under other provisions of sections 86.900 to 86.1280 and shall in no way have the effect of reducing benefits otherwise payable to such surviving spouse. The amount of equalizing supplemental benefit or equalizing supplemental compensation under this subsection may be adjusted by cost-of-living adjustments, determined by the retirement board not more frequently than annually, but in no event shall the aggregate of such equalizing supplemental benefit or compensation together with all such cost-of-living adjustments thereto exceed twenty-five percent of the base pension of the surviving spouse. Each cost-of-living adjustment to an equalizing supplemental benefit or compensation under this subsection shall be determined independently of any cost-of-living adjustment to any other benefit under sections 86.900 to 86.1280. In all events the term "surviving spouse" as used in this subsection shall not include any children of the member who would be entitled to receive part or all of the pension that would be received by a surviving spouse, if living.

6. In determining and granting the cost-of-living adjustments under this section, the retirement board shall adopt such rules and regulations as may be necessary to effectuate the purposes of this section, including provisions for the manner of computation of such adjustments and the effective dates thereof. The retirement board shall provide for such adjustments to be determined once each year and granted on a date or dates to be chosen by the board. The retirement board shall not be required to prorate the initial adjustment to any benefit or compensation under this section for any member.

7. The determination of whether the retirement system will remain actuarially sound shall be made at the time any cost-of-living adjustment under this section is granted. If at any time the retirement system ceases to be actuarially sound, any benefit or compensation payments provided under this section shall continue as adjusted by increases or decreases theretofore granted. A member of the retirement board shall have no personal liability for granting increases under this section if that retirement board member in good faith relied and acted upon advice of a qualified actuary that the retirement system would remain actuarially sound.

86.1560. DISABILITY RETIREMENT PENSION, AMOUNT — DEFINITIONS — BOARD TO DETERMINE DISABILITY, PROOF MAY BE REQUIRED. — 1. A member **in active service** who becomes totally and permanently disabled, as defined in this section, shall be entitled to retire and to receive a base pension determined in accordance with the terms of this section. Members who are eligible and totally and permanently disabled shall receive a disability pension computed as follows:

(1) Duty disability, fifty percent of final compensation as of the date of disability;

(2) Nonduty disability, thirty percent of final compensation as of the date of disability, provided that a nonduty disability pension shall not be available to any member with less than ten years creditable service;

(3) In no event shall the disability pension be less than the amount to which the member would be entitled as a pension if the member retired on the same date with equivalent age and creditable service.

2. The final payment due a member receiving a disability pension shall be the payment due on the first day of the month in which such member's death occurs. Such member's surviving spouse, if any, shall be entitled to such benefits as may be provided under section 86.1610.

3. For purposes of sections 86.1310 to 86.1640, the following terms shall mean:

(1) "Duty disability", total and permanent disability directly due to and caused by actual performance of employment with the police department;

(2) "Nonduty disability", total and permanent disability arising from any other cause than duty disability;

(3) "Total and permanent disability", a state or condition which presumably prevents for the rest of a member's life the member's engaging in any occupation or performing any work for remuneration or profit. Such disability, whether duty or nonduty, must not have been caused by the member's own negligence or willful self-infliction.

4. The retirement board in its sole judgment shall determine whether the status of total and permanent disability exists. Its determination shall be binding and conclusive. The retirement board shall rely upon the findings of a medical board of three physicians, and shall procure the written recommendation of at least one member thereof in each case considered by the retirement board. The medical board shall be appointed by the retirement board and expense for such examinations as are required shall be paid from funds of the retirement system.

5. From time to time, the retirement board shall have the right to require proof of continuing disability which may include further examination by the medical board. Should the retirement board determine that disability no longer exists, it shall terminate the disability pension. A member who immediately returns to work with the police department shall again earn creditable service beginning on the first day of such return. Creditable service prior to disability retirement shall be reinstated. A member who does not return to work with the police department shall be deemed to have terminated employment at the time disability retirement commenced; but in calculating any benefits due upon such presumption, the retirement system shall receive credit for all amounts paid such member during the period of disability, except that such member shall not be obligated in any event to repay to the retirement system any amounts properly paid during such period of disability.

Approved June 17, 2008

HB 1715 [SCS HCS HB 1715]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding watercraft

AN ACT to repeal sections 304.157, 306.010, 306.015, 306.030, 306.100, 306.111, 306.112, 306.114, 306.117, 306.124, 306.125, 306.132, 306.147, 306.163, 306.190, 306.221, 306.228, 565.024, 565.082, 577.023, and 577.080, RSMo, and to enact in lieu thereof twenty-two new sections relating to watercraft, with penalty provisions and an emergency clause for a certain section.

SECTION

306.010. Definitions.
306.015. Vessels, registration, procedure, fee — delinquent application, penalty fee — failure to obtain certificate of title, effect of.
306.030. Certificate of number, application, procedure, contents, fee — numbers, how attached — numbers from federal or other state governments, reciprocity — renewal of certificate, when, how — personal property tax statement and proof of payment required — deposit and use of fees.
306.100. Classification of vessels — equipment requirements.
306.111. Negligent operation of a vessel, penalty — operating a vessel while intoxicated, penalty — involuntary manslaughter with a vessel, penalty — assault with a vessel, penalty — intoxicated condition defined.
306.112. Operating vessel with excessive blood alcohol content — penalty.
306.114. Grant of suspended imposition of sentence, requirements — validity of chemical tests — restrictions upon withdrawal of blood, procedure, no civil liability.
306.117. Admissibility of results of chemical tests — presumption of intoxication.
306.118. Aggravated, chronic, persistent, and prior offenders — enhanced penalties — procedures.
306.124. Aids to navigation and regulatory markers defined — water patrol may mark waters, hearing, notice — markings, effect of — disaster, closing of certain waters — violation, penalty.
306.125. Operation of watercraft, how — restricted areas, certain vessels, speed allowed — exceptions — penalty.
306.132. Watercraft to stop on signal of water patrol or emergency watercraft, when — authorized speed near emergency watercraft — penalty.
306.147. Muffler, defined — noise level regulation, muffler system required, certification of manufacturer — exceptions — on-site test to measure noise levels, penalty — application of section.
306.163. Commissioner of water patrol, appointment, oath, duties — granted powers of a peace officer, when — lieutenant colonel to assume the duties of the commissioner, when.
306.190. Applicability of regulations — local regulations — special local rules prohibited.
306.221. Position of vessel or person may not obstruct or impede traffic — penalty.
306.228. Authorized personnel appointments by the commissioner — national emergency, personnel called in to military service — discrimination prohibited.
565.024. Involuntary manslaughter, penalty.
565.082. Assault of a law enforcement officer, emergency personnel, or probation and parole officer in the second degree, definition, penalty.
577.023. Aggravated, chronic, persistent and prior offenders — enhanced penalties — imprisonment requirements, exceptions — procedures — definitions.
577.080. Abandoning motor vehicle — last owner of record deemed the owner of abandoned motor vehicle, procedures — penalty — civil liability.
B. Emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 304.157, 306.010, 306.015, 306.030, 306.100, 306.111, 306.112, 306.114, 306.117, 306.124, 306.125, 306.132, 306.147, 306.163, 306.190, 306.221, 306.228, 565.024, 565.082, 577.023, and 577.080, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 304.157, 306.010, 306.015, 306.030, 306.100, 306.111, 306.112, 306.114, 306.117, 306.118, 306.124, 306.125, 306.132, 306.147, 306.163, 306.190, 306.221, 306.228, 565.024, 565.082, 577.023, and 577.080, to read as follows:

304.157. VEHICLES LEFT UNATTENDED OR IMPROPERLY PARKED ON PRIVATE PROPERTY OF ANOTHER, PROCEDURE FOR REMOVAL AND DISPOSITION — VIOLATION OF CERTAIN REQUIRED PROCEDURE, PENALTY. — 1. If a person abandons property, as defined in section 304.001, on any real property owned by another without the consent of the owner or person in possession of the property, at the request of the person in possession of the real property, any member of the state highway patrol, state water patrol, sheriff, or other law enforcement officer within his jurisdiction may authorize a towing company to remove such abandoned property from the property in the following circumstances:

(1) The abandoned property is left unattended for more than forty-eight hours; or

(2) In the judgment of a law enforcement officer, the abandoned property constitutes a safety hazard or unreasonably interferes with the use of the real property by the person in possession.

2. A local government agency may also provide for the towing of motor vehicles **or vessels** from real property under the authority of any local ordinance providing for the towing of vehicles

or vessels which are derelict, junk, scrapped, disassembled or otherwise harmful to the public health under the terms of the ordinance. Any local government agency authorizing a tow under this subsection shall report the tow to the local law enforcement agency within two hours with a crime inquiry and inspection report pursuant to section 304.155.

3. Neither the law enforcement officer, local government agency nor anyone having custody of abandoned property under his or her direction shall be liable for any damage to such abandoned property occasioned by a removal authorized by this section other than damages occasioned by negligence or by willful or wanton acts or omissions.

4. The owner of real property or lessee in lawful possession of the real property or the property or security manager of the real property may authorize a towing company to remove abandoned property or property parked in a restricted or assigned area without authorization by a law enforcement officer only when the owner, lessee or property or security manager of the real property is present. A property or security manager must be a full-time employee of a business entity. An authorization to tow pursuant to this subsection may be made only under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than seventeen by twenty-two inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that unauthorized abandoned property or property parked in a restricted or assigned area will be removed at the owner's expense, disclosing the maximum fee for all charges related to towing and storage, and containing the telephone number of the local traffic law enforcement agency where information can be obtained or a twenty-four-hour staffed emergency information telephone number by which the owner of the abandoned property or property parked in a restricted or assigned area may call to receive information regarding the location of such owner's property;

(2) The abandoned property is left unattended on owner-occupied residential property with four residential units or less, and the owner, lessee or agent of the real property in lawful possession has notified the appropriate law enforcement agency, and ten hours have elapsed since that notification; or

(3) The abandoned property is left unattended on private property, and the owner, lessee or agent of the real property in lawful possession of real property has notified the appropriate law enforcement agency, and ninety-six hours have elapsed since that notification.

5. Pursuant to this section, any owner or lessee in lawful possession of real property that requests a towing company to tow abandoned property without authorization from a law enforcement officer shall at that time complete an abandoned property report which shall be considered a legal declaration subject to criminal penalty pursuant to section 575.060, RSMo. The report shall be in the form designed, printed and distributed by the director of revenue and shall contain the following:

(1) The year, model, make and abandoned property identification number of the property and the owner and any lienholders, if known;

(2) A description of any damage to the abandoned property noted by owner, lessee or property or security manager in possession of the real property;

(3) The license plate or registration number and the state of issuance, if available;

(4) The physical location of the property and the reason for requesting the property to be towed;

(5) The date the report is completed;

(6) The printed name, address and phone number of the owner, lessee or property or security manager in possession of the real property;

(7) The towing company's name and address;

(8) The signature of the towing operator;

(9) The signature of the owner, lessee or property or security manager attesting to the facts that the property has been abandoned for the time required by this section and that all statements

on the report are true and correct to the best of the person's knowledge and belief and that the person is subject to the penalties for making false statements;

(10) Space for the name of the law enforcement agency notified of the towing of the abandoned property and for the signature of the law enforcement official receiving the report; and

(11) Any additional information the director of revenue deems appropriate.

6. Any towing company which tows abandoned property without authorization from a law enforcement officer pursuant to subsection 4 of this section shall deliver a copy of the abandoned property report to the local law enforcement agency having jurisdiction over the location from which the abandoned property was towed. The copy may be produced and sent by facsimile machine or other device which produces a near exact likeness of the print and signatures required, but only if the law enforcement agency receiving the report has the technological capability of receiving such copy and has registered the towing company for such purpose. The registration requirements shall not apply to law enforcement agencies located in counties of the third or fourth classification. The report shall be delivered within two hours if the tow was made from a signed location pursuant to subdivision (1) of subsection 4 of this section, otherwise the report shall be delivered within twenty-four hours.

7. The law enforcement agency receiving such abandoned property report must record the date on which the abandoned property report is filed with such agency and shall promptly make an inquiry into the national crime information center and any statewide Missouri law enforcement computer system to determine if the abandoned property has been reported as stolen. The law enforcement agency shall enter the information pertaining to the towed property into the statewide law enforcement computer system, and an officer shall sign the abandoned property report and provide the towing company with a signed copy. The department of revenue may design and sell to towing companies informational brochures outlining owner or lessee of real property obligations pursuant to this section.

8. The law enforcement agency receiving notification that abandoned property has been towed by a towing company shall search the records of the department of revenue and provide the towing company with the latest owner and lienholder information**, if available,** on the abandoned property, and if the tower has online access to the department of revenue's records, the tower shall comply with the requirements of section 301.155, RSMo. If the abandoned property is not claimed within ten working days, the towing company shall send a copy of the abandoned property report signed by a law enforcement officer to the department of revenue.

9. If any owner or lessee of real property knowingly authorizes the removal of abandoned property in violation of this section, then the owner or lessee shall be deemed guilty of a class C misdemeanor.

306.010. DEFINITIONS.— As used in this chapter the following terms mean:

(1) "Motorboat", any vessel propelled by machinery, whether or not such machinery is a principal source of propulsion;

(2) "Operate", to navigate or otherwise use a motorboat or a vessel;

(3) "Operator", the person who operates or has charge of the navigation or use of a vessel;

(4) "Owner", a person other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest of another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

(5) "Parasailing", the towing of any person equipped with a parachute or kite equipment by any watercraft operating on the waters of this state;

(6) "Personal watercraft", a class of vessel, which is less than sixteen feet in length, propelled by machinery which is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than being operated by a person sitting or standing inside the vessel;

(7) **"Skiing", any activity that involves a person or persons being towed by a vessel, including but not limited to waterskiing, wake boarding, wake surfing, knee boarding, and tubing;**

(8) "Vessel", every motorboat and every description of motorized watercraft, and any watercraft more than twelve feet in length which is powered by sail alone or by a combination of sail and machinery, used or capable of being used as a means of transportation on water, but not any watercraft having as the only means of propulsion a paddle or oars;

[(8)**] (9)** "Watercraft", any boat or craft, including a vessel, used or capable of being used as a means of transport on waters;

[(9)**] (10)** "Waters of this state", any waters within the territorial limits of this state and lakes constructed or maintained by the United States Army Corps of Engineers except bodies of water owned by a person, corporation, association, partnership, municipality or other political subdivision, public water supply impoundments, and except drainage ditches constructed by a drainage district, but the term does include any body of water which has been leased to or owned by the state department of conservation.

306.015. VESSELS, REGISTRATION, PROCEDURE, FEE — DELINQUENT APPLICATION, PENALTY FEE — FAILURE TO OBTAIN CERTIFICATE OF TITLE, EFFECT OF. — 1. The owner of a vessel kept within this state shall cause it to be registered in the office of the director of revenue who shall issue a certificate of title for the same.

2. The owner of any vessel acquired or brought into the state shall file his application for title within sixty days after it is acquired or brought into this state. The director of revenue may grant extensions of time for titling to any person in deserving cases.

3. The fee for the certificate of title shall be seven dollars fifty cents and shall be paid to the director of revenue at the time of making application. If application for certificate of title is not made within sixty days after the vessel is acquired or brought into the state, a delinquency penalty fee of ten dollars for each thirty days of delinquency, not to exceed a total of thirty dollars, shall be imposed. If the director of revenue learns that any person has failed to make application for certificate of title within sixty days after acquiring or bringing into the state a vessel or has sold a vessel without obtaining a certificate of title, he shall cancel the registration of all motorboats, vessels, and watercraft registered in the name of the person, either as sole owner or as co-owner, and shall notify the person that the cancellation will remain in force until the person pays the delinquency penalty fee provided in this section together with all fees, charges, and payments which he should have paid in connection with the certificate of title of the vessel.

4. In the event of a sale or transfer of ownership of a vessel or outboard motor for which a certificate of ownership or manufacturer's statement of origin has been issued, the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the director of revenue, with a statement of all liens or encumbrances on such vessel or outboard motor, and deliver the same to the buyer at the time of delivery to the buyer of such vessel or outboard motor; provided that, when the transfer of a vessel or outboard motor occurs within a corporation which holds a license to operate as a motor vehicle or boat dealer under sections 301.550 to 301.573, RSMo, and this section, the provisions of subdivision (3) of subsection 6 of section 144.070, RSMo, shall not apply.

306.030. CERTIFICATE OF NUMBER, APPLICATION, PROCEDURE, CONTENTS, FEE — NUMBERS, HOW ATTACHED — NUMBERS FROM FEDERAL OR OTHER STATE GOVERNMENTS, RECIPROCITY — RENEWAL OF CERTIFICATE, WHEN, HOW — PERSONAL PROPERTY TAX STATEMENT AND PROOF OF PAYMENT REQUIRED — DEPOSIT AND USE OF FEES. — 1. The owner of each vessel requiring numbering by this state shall file an application for number with the department of revenue on forms provided by it. The application shall contain a full description of the vessel, factory number or serial number, together with a statement of the

applicant's source of title and of any liens or encumbrances on the vessel. For good cause shown the director of revenue may extend the period of time for making such application. The director of revenue shall use reasonable diligence in ascertaining whether the facts stated in such application are true, and, if satisfied that the applicant is the lawful owner of such vessel, or otherwise entitled to have the same registered in his or her name, shall thereupon issue an appropriate certificate of title over the director's signature and sealed with the seal of the director's office, procured and used for such purpose, and a certificate of number stating the number awarded to the vessel. The application shall include a provision stating that the applicant will consent to any inspection necessary to determine compliance with the provisions of this chapter and shall be signed by the owner of the vessel and shall be accompanied by the fee specified in subsection 10 of this section. The owner shall paint on or attach to each side of the bow of the vessel the identification number in a manner as may be prescribed by rules and regulations of the division of water safety in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the vessel for which issued, whenever the vessel is in operation. The operator of a vessel in which such certificate of number is not available for inspection by the state water patrol or, if the operator cannot be determined, the person who is the registered owner of the vessel shall be subject to the penalties provided in section 306.210. Vessels owned by the state or a political subdivision shall be registered but no fee shall be assessed for such registration.

2. Each new vessel sold in this state after January 1, 1970, shall have die stamped on or within three feet of the transom or stern a factory number or serial number.

3. The owner of any vessel already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the vessel on the waters of this state in excess of the sixty-day reciprocity period provided for in section 306.080. The recordation and payment of registration fee shall be in the manner and pursuant to the procedure required for the award of a number under subsection 1 of this section. No additional or substitute number shall be issued unless the number is a duplicate of an existing Missouri number.

4. In the event that an agency of the United States government shall have in force an overall system of identification numbering for vessels within the United States, the numbering system employed pursuant to this chapter by the department of revenue shall be in conformity therewith.

5. All records of the department of revenue made and kept pursuant to this section shall be public records.

6. Every certificate of number awarded pursuant to this chapter shall continue in force and effect for a period of three years unless sooner terminated or discontinued in accordance with the provisions of this chapter. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of the same or in accordance with the provisions of sections 306.010 to 306.030.

7. The department of revenue shall fix the days and months of the year on which certificates of number due to expire during the calendar year shall lapse and no longer be of any force and effect unless renewed pursuant to this chapter and may stagger such dates in order to distribute the workload.

8. When applying for or renewing a vessel's certificate of number, the owner shall submit a paid personal property tax receipt for the tax year which immediately precedes the year in which the application is made or the year in which the renewal is due and which reflects that the vessel being renewed is listed as personal property and that all personal property taxes, including delinquent taxes from prior years, have been paid, or a statement certified by the county or township in which the owner's property was assessed showing that the state and county tangible personal property taxes for such previous tax year and all delinquent taxes due have been paid by the applicant or that no such taxes were due.

9. When applying for or renewing a certificate of registration for a vessel documented with the United States Coast Guard under section 306.016, owners of vessels shall submit a paid personal property tax receipt for the tax year which immediately precedes the year in which the application is made or the renewal is due and which reflects that the vessel is listed as personal property and that all personal property taxes, including delinquent taxes from prior years, have been paid, or a statement certified by the county or township in which the owner's property was assessed showing that the state and county tangible personal property taxes for such previous tax year and all delinquent taxes due have been paid by the applicant or that no such taxes were due.

10. The fee to accompany each application for a certificate of number is:

For vessels under 16 feet in length... . . . . $25.00
For vessels at least 16 feet in length but less than 26 feet in length.. . . . . $55.00
For vessels at least 26 feet in length but less than 40 feet in length.. . . . . $100.00
For vessels at least 40 feet and over. . . . . $150.00.

11. The certificate of title and certificate of number issued by the director of revenue shall be manufactured in a manner to prohibit as nearly as possible the ability to alter, counterfeit, duplicate, or forge such certificate without ready detection.

12. The first two million dollars collected annually under the provisions of this section shall be deposited into the state general revenue fund. All fees collected under the provisions of this section in excess of two million dollars annually shall be deposited in the Missouri state water patrol fund and shall be used exclusively for the Missouri state water patrol.

13. Notwithstanding the provisions of subsection 10 of this section, vessels at least 16 feet in length but less than 28 feet in length, that are homemade, constructed out of wood, and have a beam of 5 feet or less, shall pay a fee of $55.00 which shall accompany each application for a certification number.

306.100. CLASSIFICATION OF VESSELS — EQUIPMENT REQUIREMENTS. — 1. For the purpose of this section, vessels shall be divided into four classes as follows:

(1) Class A, less than sixteen feet in length;

(2) Class 1, at least sixteen and less than twenty-six feet in length;

(3) Class 2, at least twenty-six and less than forty feet in length;

(4) Class 3, forty feet and over.

2. All vessels shall display from sunset to sunrise the following lights when under way, and during such time no other lights **[**which may be mistaken for those prescribed**], continuous spotlights or docking lights, or other nonprescribed lights** shall be exhibited:

(1) Vessels of classes A and 1:

(a) A bright white light aft to show all around the horizon;

(b) A combined light in the forepart of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points (22 1/2 degrees) abaft the beam on their respective sides.

(2) Vessels of classes 2 and 3:

(a) A bright white light in the forepart of the vessel as near the stem as practicable, so constructed as to show the unbroken light over an arc of the horizon of twenty points (225 degrees) of the compass, so fixed as to throw the light ten points (112 1/2 degrees) on each side of the vessel; namely, from right ahead to two points (22 1/2 degrees) abaft the beam on either side;

(b) A bright white light aft to show all around the horizon and higher than the white light forward;

(c) On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points (112 1/2 degrees) of the compass, so fixed as to throw the light from right ahead to two points (22 1/2 degrees) abaft the beam on the starboard side; on the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points (112 1/2 degrees) of the compass, so fixed as to throw the light from right ahead to two

points (22 1/2 degrees) abaft the beam on the portside. The side lights shall be fitted with inboard screens so set as to prevent these lights from being seen across the bow.

(3) Vessels of classes A and 1 when propelled by sail alone shall exhibit the combined light prescribed by this section and a twelve point (135 degree) white light aft. Vessels of classes 2 and 3, when so propelled, shall exhibit the colored side lights, suitably screened, prescribed by this section and a twelve point (135 degree) white light aft.

(4) All vessels between the hours of sunset and sunrise that are not under way, moored at permanent dockage or attached to an immovable object on shore so that they do not extend more than fifty feet from the shore shall display one three-hundred-sixty-degree white light visible three hundred sixty degrees around the horizon.

(5) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word "visible" in this subsection, when applied to lights, shall mean visible on a dark night with clear atmosphere.

(6) When propelled by sail and machinery every vessel shall carry the lights required by this section for a motorboat propelled by machinery only.

3. Any watercraft not defined as a vessel shall, from sunset to sunrise, carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

4. Any vessel may carry and exhibit the lights required by the federal regulations for preventing collisions at sea, in lieu of the lights required by subsection 2 of this section.

5. All other watercraft over sixty-five feet in length and those propelled solely by wind effect on the sail shall display lights prescribed by federal regulations.

6. Any watercraft used by a person engaged in the act of sport fishing is not required to display any lights required by this section if no other vessel is within the immediate vicinity of the first vessel, the vessel is using an electric trolling motor and the vessel is within fifty feet of the shore.

7. Every vessel, except those in class A, shall have on board at least one wearable personal flotation device of type I, II or III for each person on board and each person being towed who is not wearing one. Every such vessel shall also have on board at least one type IV throwable personal flotation device.

8. All class A motorboats and all watercraft traveling on the waters of this state shall have on board at least one type I, II, III or IV personal flotation device for each person on board and each person being towed who is not wearing one.

9. All lifesaving devices required by subsections 7 and 8 of this section shall be United States Coast Guard approved, in serviceable condition and so placed as to be readily accessible.

10. Every vessel which is carrying or using flammable or toxic fluid in any enclosure for any purpose, and which is not an entirely open vessel, shall have an efficient natural or mechanical ventilation system which must be capable of removing resulting gases prior to and during the time the vessel is occupied by any person.

11. Motorboats shall carry on board at least the following United States Coast Guard approved fire extinguishers:

(1) Every class A and every class 1 motorboat carrying or using gasoline or any other flammable or toxic fluid, one B1 type fire extinguisher;

(2) Every class 2 motorboat, one B2 or two B1 type fire extinguishers;

(3) Every class 3 motorboat:

(a) Three B1 type fire extinguishers; or

(b) One B2 type and one B1 type fire extinguisher; or

(c) A fixed fire extinguishing system and one B2 type fire extinguisher; or

(d) A fixed fire extinguishing system and two B1 type fire extinguishers.

12. All class 1 and 2 motorboats and vessels shall have a sounding device. All class 3 motorboats and vessels shall have at least a sounding device and one bell.

13. No person shall operate any watercraft which is not equipped as required by this section.

14. A Missouri state water patrol officer may direct the operator of any watercraft being operated without sufficient personal flotation devices, fire-fighting devices or in an overloaded or other unsafe condition or manner to take whatever immediate and reasonable steps are necessary for the safety of those aboard when, in the judgment of the officer, such operation creates a hazardous condition. The officer may direct the operator to return the watercraft to the nearest safe mooring and to remain there until the situation creating the hazardous condition is corrected.

15. A Missouri state water patrol officer may remove any unmanned or unattended watercraft from the water when, in the judgment of the officer, the watercraft creates a hazardous condition.

16. Nothing in this section shall prohibit the use of additional specialized lighting used in the act of sport fishing.

306.111. NEGLIGENT OPERATION OF A VESSEL, PENALTY — OPERATING A VESSEL WHILE INTOXICATED, PENALTY — INVOLUNTARY MANSLAUGHTER WITH A VESSEL, PENALTY — ASSAULT WITH A VESSEL, PENALTY — INTOXICATED CONDITION DEFINED. — 1. A person commits the crime of negligent operation of a vessel if when operating a vessel **[**on the Mississippi River, Missouri River or the lakes this state**]** he **or she** acts with criminal negligence, as defined in subsection 5 of section 562.016, RSMo, to cause physical injury to any other person or damage to the property of any other person. A person convicted of negligent operation of a vessel is guilty of a class B misdemeanor upon conviction for the first violation, guilty of a class A misdemeanor upon conviction for the second violation, and guilty of a class D felony for conviction for the third and subsequent violations.

2. A person commits the crime of operating a vessel while intoxicated if he **or she** operates a vessel on the Mississippi River, Missouri River or the lakes of this state while in an intoxicated condition. **[**A person convicted of**]** Operating a vessel while intoxicated is **[**guilty of**]** a class B misdemeanor **[**upon conviction for the first violation, guilty of a class A misdemeanor upon conviction for the second violation, and guilty of a class D felony for conviction for the third and subsequent violations**]**.

3. A person commits the crime of involuntary manslaughter with a vessel if, while in an intoxicated condition, he **or she** operates any vessel **[**on the Mississippi River, Missouri River or the lakes of this state**]** and, when so operating, acts with criminal negligence to cause the death of any person. Involuntary manslaughter with a vessel is a class C felony.

4. A person commits the crime of assault with a vessel in the second degree if, while in an intoxicated condition, he **or she** operates any vessel **[**on the Mississippi River, Missouri River or the lakes of this state**]** and, when so operating, acts with criminal negligence to cause physical injury to any other person. Assault with a vessel in the second degree is a class D felony.

5. For purposes of this section, a person is in an intoxicated condition when he **or she** is under the influence of alcohol, a controlled substance or drug, or any combination thereof.

306.112. OPERATING VESSEL WITH EXCESSIVE BLOOD ALCOHOL CONTENT — PENALTY. — 1. A person commits the crime of operating a vessel with excessive blood alcohol content if such person operates a vessel on the Mississippi River, Missouri River or the lakes of this state with **[**ten-hundredths**]** **eight-hundredths** of one percent or more by weight of alcohol in such person's blood.

2. As used in this section, percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood and may be shown by chemical analysis of the person's blood, breath, urine, or saliva.

3. **[**Any person convicted of**]** Operating a vessel with excessive blood alcohol content is **[**guilty of**]** a class B misdemeanor **[**upon conviction for the first violation, guilty of a class A

misdemeanor upon conviction for the second violation, and guilty of a class D felony for conviction for the third and subsequent violations**]**.

306.114. GRANT OF SUSPENDED IMPOSITION OF SENTENCE, REQUIREMENTS — VALIDITY OF CHEMICAL TESTS — RESTRICTIONS UPON WITHDRAWAL OF BLOOD, PROCEDURE, NO CIVIL LIABILITY. — 1. No person convicted of or pleading guilty to a violation of section 306.111 or 306.112 shall be granted a suspended imposition of sentence, unless such person is placed on probation for a minimum of two years and a record of the conviction or plea of guilty is entered into the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol.

2. Chemical tests of a person's blood, breath, urine, or saliva to be considered valid under the provisions of sections 306.111 to 306.119 shall be performed according to methods and devices approved by the department of health and senior services by licensed medical personnel or by a person possessing a valid permit issued by the department of health and senior services for this purpose. In addition, any state, county, or municipal law enforcement officer who is certified pursuant to chapter 590, RSMo, may, prior to arrest, administer a portable chemical test to any person suspected of operating any vessel in violation of section 306.111 or 306.112. A portable chemical test shall be admissible as evidence of probable cause to arrest and as exculpatory evidence, but shall not be admissible as evidence of blood alcohol content. The provisions of section 306.116 shall not apply to a test administered prior to arrest pursuant to this section.

3. The department of health and senior services shall approve satisfactory techniques, devices, equipment, or methods to conduct tests required by sections 306.111 to 306.119, and shall establish standards as to the qualifications and competence of individuals to conduct analyses and to issue permits which shall be subject to termination, suspension or revocation by the department of health and senior services.

4. A licensed physician, registered nurse, or trained medical technician, acting at the request and direction of a law enforcement officer, shall withdraw blood for the purpose of determining the alcohol content of the blood, unless the medical personnel, in the exercise of good faith medical judgment, believes such procedure would endanger the life or health of the person in custody. Blood may be withdrawn only by such medical personnel, but such restriction shall not apply to the taking of a breath test or a urine or saliva specimen. In withdrawing blood for the purpose of determining the alcohol content in the blood, only a previously unused and sterile needle and sterile vessel shall be used and the withdrawal shall otherwise be in strict accord with accepted medical practices. **[**A nonalcoholic antiseptic shall be used for cleansing the skin prior to a venapuncture.**]** Upon the request of the person who is tested, full information concerning the test taken at the direction of the law enforcement officer shall be made available to such person.

5. No person who administers any test pursuant to the provisions of sections 306.111 to 306.119 upon the request of a law enforcement officer, no hospital in or with which such person is employed or is otherwise associated or in which such test is administered, and no other person, firm, or corporation by whom or with which such person is employed or is in any way associated shall be civilly liable for damages to the person tested, except for negligence in administering of the test or for willful and wanton acts or omissions.

6. Any person who is dead, unconscious or who is otherwise in a condition rendering such person incapable of refusing to take a test as provided in sections 306.111 to 306.119 shall be deemed not to have withdrawn the consent provided by section 306.116 and the test or tests may be administered.

306.117. ADMISSIBILITY OF RESULTS OF CHEMICAL TESTS — PRESUMPTION OF INTOXICATION. — 1. Upon the trial of any person for violation of any of the provisions of section 306.111 or 306.112 the amount of alcohol or drugs in the person's blood at the time of the act alleged as shown by any chemical analysis of the person's blood, breath, urine, or saliva

is admissible in evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not prevent the admissibility or introduction of such evidence if otherwise admissible. Evidence of alcohol in a person's blood shall be given the following effect:

(1) If there was five-hundredths of one percent or less by weight of alcohol in such person's blood, it shall be presumed that the person was not intoxicated at the time the specimen was obtained;

(2) If there was in excess of five-hundredths of one percent but less than **[**ten-hundredths**]** **eight-hundredths** of one percent by weight of alcohol in such person's blood, the fact shall not give rise to any presumption that the person was or was not intoxicated, but the fact may be considered with other competent evidence in determining whether the person was intoxicated;

(3) If there was **[**ten-hundredths**]** **eight-hundredths** of one percent or more by weight of alcohol in the person's blood, this shall be prima facie evidence that the person was intoxicated at the time the specimen was taken.

2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

3. A chemical analysis of a person's breath, blood, urine, or saliva, in order to give rise to the presumption or to have the effect provided for in subsection 1 of this section, shall have been performed as provided in sections 306.111 to 306.119 and in accordance with methods and standards approved by the department of health and senior services.

4. The provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was intoxicated or under the influence of a controlled substance, or drug, or a combination of either or both with or without alcohol.

306.118. AGGRAVATED, CHRONIC, PERSISTENT, AND PRIOR OFFENDERS — ENHANCED PENALTIES — PROCEDURES. — 1. For purposes of this section, unless the context clearly indicates otherwise, the following terms mean:

(1) "Aggravated offender", a person who:

(a) Has pleaded guilty to or has been found guilty of three or more intoxication-related boating offenses; or

(b) Has pleaded guilty to or has been found guilty of one or more intoxication-related boating offenses and any of the following: involuntary manslaughter under subsection 3 of section 306.111; assault with a vessel in the second degree under subsection 4 of section 306.111, or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(2) "Chronic offender":

(a) A person who has pleaded guilty to or has been found guilty of four or more intoxication-related boating offenses; or

(b) A person who has pleaded guilty to or has been found guilty of, on two or more separate occasions, any combination of the following: involuntary manslaughter under subsection 3 of section 306.111; assault with a vessel in the second degree under subsection 4 of section 306.111; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo; or

(c) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related boating offenses and any of the following: involuntary manslaughter under subsection 3 of section 306.111; assault with a vessel in the second degree under subsection 4 of section 306.111; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(3) "Intoxication-related boating offense", operating a vessel while intoxicated under subsection 2 of section 306.111; operating a vessel with excessive blood alcohol content under section 306.112; involuntary manslaughter under subsection 3 of section 306.111; assault with a vessel in the second degree under subsection 4 of section 306.111; any

violation of subsection 2 of section 306.110; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(4) "Persistent offender", one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related boating offenses;

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter under subsection 3 of section 306.111, assault in the second degree under subsection 4 of section 306.111, assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(5) "Prior offender", a person who has pleaded guilty to or has been found guilty of one intoxication-related boating offense, where such prior offense occurred within five years of the occurrence of the intoxication-related boating offense for which the person is charged.

2. Any person who pleads guilty to or is found guilty of a violation of subsection 2 of section 306.110, section 306.111, or section 306.112, who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor.

3. Any person who pleads guilty to or is found guilty of a violation of subsection 2 of section 306.110, section 306.111, or section 306.112, who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

4. Any person who pleads guilty to or is found guilty of a violation of subsection 2 of section 306.110, section 306.111, or section 306.112, who is alleged and proved to be an aggravated offender shall be guilty of a class C felony.

5. Any person who pleads guilty to or is found guilty of a violation of subsection 2 of section 306.110, section 306.111, or section 306.112 who is alleged and proved to be a chronic offender shall be guilty of a class B felony.

6. No state, county, or municipal court shall suspend the imposition of sentence as to a prior offender, persistent offender, aggravated offender, or chronic offender under this section, nor sentence such person to pay a fine in lieu of a term of imprisonment, notwithstanding the provisions of section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until he or she has served a minimum of five days imprisonment, unless as a condition of such parole or probation such person performs at least thirty days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. No persistent offender shall be eligible for parole or probation until he or she has served a minimum of ten days imprisonment, unless as a condition of such parole or probation such person performs at least sixty days of community service under the supervision of the court. No aggravated offender shall be eligible for parole or probation until he or she has served a minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or probation until he or she has served a minimum of two years imprisonment.

7. The state, county, or municipal court shall find the defendant to be a prior offender, persistent offender, aggravated offender, or chronic offender if:

(1) The indictment or information, original or amended, or the information in lieu of an indictment pleads all essential facts warranting a finding that the defendant is a prior offender, persistent offender, aggravated offender, or chronic offender; and

(2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding beyond a reasonable doubt the defendant is a prior offender, persistent offender, aggravated offender, or chronic offender; and

(3) The court makes findings of fact that warrant a finding beyond a reasonable doubt by the court that the defendant is a prior offender, persistent offender, aggravated offender, or chronic offender.

8. In a jury trial, the facts shall be pleaded, established and found prior to submission to the jury outside of its hearing.

9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in findings of such facts to a later time, but prior to sentencing.

10. The defendant shall be accorded full rights of confrontation and cross-examination, with the opportunity to present evidence, at such hearings.

11. The defendant may waive proof of the facts alleged.

12. Nothing in this section shall prevent the use of presentence investigations or commitments.

13. At the sentencing hearing both the state, county, or municipality and the defendant shall be permitted to present additional information bearing on the issue of sentence.

14. The pleas or findings of guilty shall be prior to the date of commission of the present offense.

15. The court shall not instruct the jury as to the range of punishment or allow the jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

306.124. AIDS TO NAVIGATION AND REGULATORY MARKERS DEFINED — WATER PATROL MAY MARK WATERS, HEARING, NOTICE — MARKINGS, EFFECT OF — DISASTER, CLOSING OF CERTAIN WATERS — VIOLATION, PENALTY. — 1. (1) "Aids to navigation" means buoys, beacons or other fixed objects in the water which are used to mark obstructions to navigation or to direct navigation through safe channels.

(2) "Regulatory markers" means any anchored or fixed markers in or on the water or signs on the shore or on bridges over the water other than aids to navigation and shall include but not be limited to bathing markers, speed zone markers, information markers, danger zone markers, boat keep-out areas, and mooring buoys.

2. The Missouri state water patrol after a public hearing pursuant to notice thereof published not less than ten days prior thereto in each county to be affected may provide for the uniform marking of the water areas in this state through the placement of aids to navigation and regulatory markers. The Missouri state water patrol shall establish a marking system compatible with the system of aids to navigation prescribed by the United States Coast Guard. No city, county, or person shall mark or obstruct the water of this state in any manner so as to endanger the operation of watercraft or conflict with the marking system prescribed by the state water patrol.

3. Whenever, due to any actual or imminent man-made or natural disaster, the navigation or use of any waters of this state presents an unreasonable danger to persons or property, the Missouri state water patrol may, with the consent of the director of the department of public safety, close such waters **[**by the placement of regulatory markers**]**.

4. The operation of any watercraft within prohibited areas that are marked shall be prima facie evidence of negligent operation.

5. It shall be unlawful for any person to operate a watercraft on the waters of this state in a manner other than that prescribed or permitted by regulatory markers.

6. No person shall moor or fasten a watercraft to or willfully damage, tamper, remove, obstruct, or interfere with any aid to navigation or regulatory marker established pursuant to sections 306.010 to 306.126.

306.125. OPERATION OF WATERCRAFT, HOW — RESTRICTED AREAS, CERTAIN VESSELS, SPEED ALLOWED — EXCEPTIONS — PENALTY. — 1. Every person shall operate a motorboat, vessel or watercraft in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.

2. No person shall operate a motorboat, vessel or watercraft at any time from a half-hour after sunset until an hour before sunrise the following day at a speed exceeding thirty miles per hour. **[**This subsection shall only apply to the waters of the Mississippi River, the waters of the Missouri River, and lakes with an aggregate shoreline in excess of one hundred sixty miles.**]**

3. Vessels shall not be operated within one hundred feet of any dock, pier, occupied anchored boat or buoyed restricted area on any lake at a speed in excess of slow-no wake speed.

4. Subsection 1 of this section shall not apply to a motorboat or other boat race authorized under section 306.130.

306.132. WATERCRAFT TO STOP ON SIGNAL OF WATER PATROL OR EMERGENCY WATERCRAFT, WHEN — AUTHORIZED SPEED NEAR EMERGENCY WATERCRAFT — PENALTY. — 1. Any person operating a watercraft on the waters of this state shall stop such watercraft upon a signal of any member of the Missouri state water patrol and obey any other reasonable signal or direction of such member of the Missouri state water patrol given in directing the movement of traffic on the waters of this state.

2. Any person operating a watercraft upon the waters of this state shall immediately stop or position such watercraft in such a way as to give the right-of-way on the water to any emergency watercraft, as established by the Missouri state water patrol, when such emergency watercraft gives an audible signal by siren or gives a visible signal by having at least one lighted lamp exhibiting a red or blue light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such emergency watercraft.

3. **Vessels shall not be operated at a speed in excess of slow no-wake speed within one hundred feet of any emergency vessel that has red or blue lighting displayed.**

4. Any person who violates the provisions of this section is guilty of a class C misdemeanor.

306.147. MUFFLER, DEFINED — NOISE LEVEL REGULATION, MUFFLER SYSTEM REQUIRED, CERTIFICATION OF MANUFACTURER — EXCEPTIONS — ON-SITE TEST TO MEASURE NOISE LEVELS, PENALTY — APPLICATION OF SECTION. — 1. As used in this section, the term "muffler" means a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and which prevents excessive or unusual noise.

2. Effective January 1, 1996, a person shall not manufacture, sell or offer for sale or operate in this state any motorboat manufactured after that date that exceeds the noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005. All motorboats manufactured prior to January 1, 1996, shall not exceed eighty-six decibels on an A-weighted scale when subjected to a sound level test as prescribed by SAE J34 when measured from a distance of fifty or more feet from the motorboat.

3. No person shall remove, alter or otherwise modify in any way a muffler or muffler system in a manner which will prevent it from being operated in accordance with this section. Nothing in this section shall preclude a person from removing, altering or modifying a muffler or muffler system so long as the muffler or muffler system continues to comply with subsection 2 of this section. This section shall not be construed so as to prohibit the use of any exhaust system or device, including but not limited to those not discharging water with exhaust gases, so long as the device or system is in compliance with subsection 2 of this section.

4. No motorboat shall be equipped with any electrical or mechanical device or switch that when manipulated in any manner would allow the muffler or exhaust system to emit a noise level that exceeds the maximums in subsection 2 of this section.

5. Effective January 1, 1996, a person shall not manufacture, nor shall any person sell or offer for sale any motorboat which is manufactured after January 1, 1996, which is equipped with a muffler or muffler system which does not comply with this section. The subsection shall not apply to power vessels designed, manufactured and sold for the sole purpose of competing

in racing events and for no other purpose. Any such exemption or exception shall be documented in every sale agreement and shall be formally acknowledged by signature on the part of both the buyer and the seller. Copies of such agreement shall be maintained by both parties. A copy of such agreement shall be kept on board whenever the motorboat is operated. Any motorboat sold under this exemption may only be operated on the waters of this state in accordance with subsection 7 of this section.

6. As of January 1, 1996, every manufacturer which delivers a new motorboat for sale in this state shall certify, if the purchaser or dealer makes a request in writing, that the decibel level of the motorboat engine, muffler and exhaust system, as delivered to any licensed dealer in this state, does not exceed the noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005. Such certificate of decibel level from the manufacturer shall be given by the dealer to the purchaser of the new motorboat if the motorboat is sold for use upon the waters of this state. The purchaser shall sign a statement acknowledging receipt of the certificate of decibel level which shall be supplied by the dealer. The dealer shall represent by affidavit whether or not the engine or muffler system of the new motorboat being sold has been altered or modified in any way.

7. The provisions of this section shall not apply to motorboats registered and actually participating in a racing event or tune-up periods for such racing events or to a motorboat being operated by a boat or engine manufacturer for the purpose of testing or development. The operator of any motorboat operated upon the waters of this state for the purpose of a tune-up for a sanctioned race or for testing or development by a boat or engine manufacturer shall at all times have in such operator's possession and produce on demand by a law enforcement officer a test permit issued by the state water patrol. For the purpose of races or racing events, such race shall only be sanctioned when conducted in accordance with and approved by the United States Coast Guard or this state.

8. Any officer authorized to enforce the provisions of this section who has probable cause to believe that a motorboat is not in compliance with the noise levels established in this section may direct the operator of such motorboat to submit the motorboat to an on-site test to measure noise levels, with the officer on board if such officer chooses, and the operator shall comply with such request. The owner of any motorboat which violates any provision of this section shall have sixty days from the date of the violation to bring the motorboat into compliance with the provisions of this section. Thereafter, it shall be the owner's responsibility to have the motorboat tested by the state water patrol. If the motorboat fails the state water patrol test, the owner shall immediately moor the motorboat and shall keep the motorboat moored until the state water patrol certifies that the motorboat is in compliance with the provisions of this section. Any person who fails to comply with a request or direction of an officer made pursuant to this subsection is guilty of a class C misdemeanor. Nothing in this subsection shall be construed to limit the officer's ability to enforce this section and to issue citations to the owner or operator of any motorboat during the sixty-day compliance period.

9. Any officer who conducts motorboat sound level tests as provided in this section shall be qualified in motorboat noise testing by the department of public safety. Such qualifications shall include but may not be limited to the selection of the measurement site, and the calibration and use of noise testing equipment in accordance with the testing procedure prescribed by SAE J2005 and SAE J34.

10. Unless otherwise indicated, any person who knowingly violates this section is guilty of an infraction for a first offense with a penalty not to exceed one hundred dollars, is guilty of an infraction for a second offense with a penalty not to exceed two hundred dollars, and is guilty of an infraction for a third or subsequent offense with a penalty not to exceed three hundred dollars.

11. **[**This section shall only apply to the waters of the Mississippi River, the waters of the Missouri River, and lakes with an aggregate shoreline in excess of one hundred sixty miles.**]** This section shall not apply to motorboats not intended for use in this state.

306.163. COMMISSIONER OF WATER PATROL, APPOINTMENT, OATH, DUTIES — GRANTED POWERS OF A PEACE OFFICER, WHEN — LIEUTENANT COLONEL TO ASSUME THE DUTIES OF THE COMMISSIONER, WHEN. — 1. The governor, by and with the advice and consent of the senate, shall appoint a commissioner of the Missouri state water patrol to serve at the pleasure of the governor. The commissioner shall take and subscribe an oath of office to perform the commissioner's duties faithfully and impartially. **The commissioner appointed by the governor shall have at least ten years of experience in law enforcement similar to the duties exercised by uniformed officers of the state water patrol or at least five years of experience as a uniformed officer of the state water patrol.**

2. The commissioner shall prescribe rules for instruction and discipline and make administrative rules and regulations and fix the hours of duty for the members of the patrol. The commissioner shall have charge of the office of the patrol, shall be custodian of the records of the patrol, and shall direct the day-to-day activities of the officers, patrolmen and office personnel.

3. The commissioner shall be given a certificate of appointment, a copy of which shall be filed with the secretary of state, granting him or her all the powers of a peace officer to enforce all the laws of this state within the jurisdiction of the water patrol as listed in section 306.165, provided that he has completed a law enforcement training course which meets the standards established in chapter 590, RSMo.

4. In the absence, or upon the disability, of the commissioner, or at the time the commissioner designates, the lieutenant colonel shall assume the duties of the commissioner. In case of the disability of the commissioner and the lieutenant colonel, the governor may designate a major as acting commissioner and when so designated, the acting commissioner shall have all the powers and duties of the commissioner.

306.190. APPLICABILITY OF REGULATIONS — LOCAL REGULATIONS — SPECIAL LOCAL RULES PROHIBITED. — 1. The provisions of this chapter and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any watercraft shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon; but nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of watercraft the provisions of which are identical to the provisions of this chapter, amendments thereto or regulations issued thereunder; except that the ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments thereto or regulations issued thereunder.

2. Any city or subdivision of this state may adopt special rules and regulations with reference to the operation of watercraft on any waters owned by the city or political subdivision.

3. The provisions of this chapter shall not apply to farm ponds not commercially operated for boating purposes.

4. No city or political subdivision of this state shall adopt special rules and regulations with reference to restricting the operation of personal watercraft on waters of this state.

306.221. POSITION OF VESSEL OR PERSON MAY NOT OBSTRUCT OR IMPEDE TRAFFIC — PENALTY. — 1. No person shall operate or otherwise position a vessel or other object or any person in such manner as to obstruct or impede the normal flow of traffic on the **[**lakes**]** **waters** of this state.

2. Any person who violates subsection 1 of this section is guilty upon the first conviction of a class C misdemeanor and upon the second and any subsequent conviction of a class B misdemeanor.

306.228. AUTHORIZED PERSONNEL APPOINTMENTS BY THE COMMISSIONER — NATIONAL EMERGENCY, PERSONNEL CALLED IN TO MILITARY SERVICE — DISCRIMINATION

PROHIBITED. — 1. The commissioner may appoint from within the membership not more than one assistant commissioner, two majors, nine captains, nine lieutenants, and one director of radio, each of whom shall have the same qualifications as the commissioner, and such additional force of sergeants, corporals and patrolmen**[**, so that the total number of members of the patrol shall not exceed ninety-nine officers and patrolmen**]** and such numbers of radio personnel as the commissioner deems necessary.

2. In case of a national emergency the commissioner may name additional patrolmen and radio personnel in a number sufficient to replace, temporarily, patrolmen and radio personnel called into military services.

3. Applicants shall not be discriminated against because of race, creed, color, national origin, religion or sex.

565.024. INVOLUNTARY MANSLAUGHTER, PENALTY. — 1. A person commits the crime of involuntary manslaughter in the first degree if he or she:

(1) Recklessly causes the death of another person; or

(2) While in an intoxicated condition operates a motor vehicle **or vessel** in this state and, when so operating, acts with criminal negligence to cause the death of any person; or

(3) While in an intoxicated condition operates a motor vehicle **or vessel** in this state, and, when so operating, acts with criminal negligence to:

(a) Cause the death of any person not a passenger in the vehicle **or vessel** operated by the defendant, including the death of an individual that results from the defendant's vehicle leaving a highway, as defined by section 301.010, RSMo, or the highway's right-of-way; or vessel leaving the water; or

(b) Cause the death of two or more persons; or

(c) Cause the death of any person while he or she has a blood alcohol content of at least eighteen-hundredths of one percent by weight of alcohol in such person's blood; or

(4) Operates a motor vehicle in violation of subsection 2 of section 304.022, RSMo, and when so operating, acts with criminal negligence to cause the death of any person authorized to operate an emergency vehicle, as defined in section 304.022, RSMo, while such person is in the performance of official duties**;**

(5) Operates a vessel in violation of subsections 1 and 2 of section 306.132, RSMo, and when so operating acts with criminal negligence to cause the death of any person authorized to operate an emergency watercraft, as defined in section 306.132, RSMo, while such person is in the performance of official duties.

2. Involuntary manslaughter in the first degree under subdivision (1) or (2) of subsection 1 of this section is a class C felony. Involuntary manslaughter in the first degree under subdivision (3) of subsection 1 of this section is a class B felony. A second or subsequent violation of subdivision (3) of subsection 1 of this section is a class A felony. For any violation of subdivision (3) of subsection 1 of this section, the minimum prison term which the defendant must serve shall be eighty-five percent of his or her sentence. Any violation of **[**subdivision**]** **subdivisions** (4) **and (5)** of subsection 1 of this section is a class B felony.

3. A person commits the crime of involuntary manslaughter in the second degree if he acts with criminal negligence to cause the death of any person.

4. Involuntary manslaughter in the second degree is a class D felony.

565.082. ASSAULT OF A LAW ENFORCEMENT OFFICER, EMERGENCY PERSONNEL, OR PROBATION AND PAROLE OFFICER IN THE SECOND DEGREE, DEFINITION, PENALTY. — 1. A person commits the crime of assault of a law enforcement officer, emergency personnel, or probation and parole officer in the second degree if such person:

(1) Knowingly causes or attempts to cause physical injury to a law enforcement officer, emergency personnel, or probation and parole officer by means of a deadly weapon or dangerous instrument;

(2) Knowingly causes or attempts to cause physical injury to a law enforcement officer, emergency personnel, or probation and parole officer by means other than a deadly weapon or dangerous instrument;

(3) Recklessly causes serious physical injury to a law enforcement officer, emergency personnel, or probation and parole officer; or

(4) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle **or vessel** in this state and when so operating, acts with criminal negligence to cause physical injury to a law enforcement officer, emergency personnel, or probation and parole officer;

(5) Acts with criminal negligence to cause physical injury to a law enforcement officer, emergency personnel, or probation and parole officer by means of a deadly weapon or dangerous instrument;

(6) Purposely or recklessly places a law enforcement officer, emergency personnel, or probation and parole officer in apprehension of immediate serious physical injury; or

(7) Acts with criminal negligence to create a substantial risk of death or serious physical injury to a law enforcement officer, emergency personnel, or probation and parole officer.

2. As used in this section, "emergency personnel" means any paid or volunteer firefighter, emergency room or trauma center personnel, or emergency medical technician as defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

3. Assault of a law enforcement officer, emergency personnel, or probation and parole officer in the second degree is a class B felony unless committed pursuant to subdivision (2), (5), (6), or (7) of subsection 1 of this section in which case it is a class C felony.

577.023. AGGRAVATED, CHRONIC, PERSISTENT AND PRIOR OFFENDERS — ENHANCED PENALTIES — IMPRISONMENT REQUIREMENTS, EXCEPTIONS — PROCEDURES — DEFINITIONS. — 1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An "aggravated offender" is a person who:

(a) Has pleaded guilty to or has been found guilty of three or more intoxication-related traffic offenses; or

(b) Has pleaded guilty to or has been found guilty of one or more intoxication-related traffic offense and, in addition, any of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; or assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(2) A "chronic offender" is:

(a) A person who has pleaded guilty to or has been found guilty of four or more intoxication-related traffic offenses; or

(b) A person who has pleaded guilty to or has been found guilty of, on two or more separate occasions, any combination of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo; or

(c) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses and, in addition, any of the following: involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; assault in the second degree under subdivision (4) of

subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

(3) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, murder in the second degree under section 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where the defendant was represented by or waived the right to an attorney in writing;

(4) A "persistent offender" is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses;

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section 565.082, RSMo; and

(5) A "prior offender" is a person who has pleaded guilty to or has been found guilty of one intoxication-related traffic offense, where such prior offense occurred within five years of the occurrence of the intoxication-related traffic offense for which the person is charged.

2. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor.

3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

4. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a class C felony.

5. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class B felony.

6. No state, county, or municipal court shall suspend the imposition of sentence as to a prior offender, persistent offender, aggravated offender, or chronic offender under this section nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until he or she has served a minimum of five days imprisonment, unless as a condition of such parole or probation such person performs at least thirty days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. No persistent offender shall be eligible for parole or probation until he or she has served a minimum of ten days imprisonment, unless as a condition of such parole or probation such person performs at least sixty days of community service under the supervision of the court. No aggravated offender shall be eligible for parole or probation until he or she has served a minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or probation until he or she has served a minimum of two years imprisonment.

7. The state, county, or municipal court shall find the defendant to be a prior offender, persistent offender, aggravated offender, or chronic offender if:

(1) The indictment or information, original or amended, or the information in lieu of an indictment pleads all essential facts warranting a finding that the defendant is a prior offender or persistent offender; and

(2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding beyond a reasonable doubt the defendant is a prior offender, persistent offender, aggravated offender, or chronic offender; and

(3) The court makes findings of fact that warrant a finding beyond a reasonable doubt by the court that the defendant is a prior offender, persistent offender, aggravated offender, or chronic offender.

8. In a jury trial, the facts shall be pleaded, established and found prior to submission to the jury outside of its hearing.

9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in findings of such facts to a later time, but prior to sentencing.

10. The defendant shall be accorded full rights of confrontation and cross-examination, with the opportunity to present evidence, at such hearings.

11. The defendant may waive proof of the facts alleged.

12. Nothing in this section shall prevent the use of presentence investigations or commitments.

13. At the sentencing hearing both the state, county, or municipality and the defendant shall be permitted to present additional information bearing on the issue of sentence.

14. The pleas or findings of guilty shall be prior to the date of commission of the present offense.

15. The court shall not instruct the jury as to the range of punishment or allow the jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

16. Evidence of **a** prior **[**convictions**]** **plea of guilty or finding of guilty in an intoxication-related traffic offense** shall be heard and determined by the trial court out of the hearing of the jury prior to the submission of the case to the jury, and shall include but not be limited to evidence of convictions received by a search of the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol. After hearing the evidence, the court shall enter its findings thereon. A **[**conviction of a violation of a municipal or county ordinance in a county or municipal court for driving while intoxicated or a conviction or a**]** plea of guilty or a finding of guilty followed by **incarceration,** a suspended imposition of sentence, suspended execution of sentence, probation or parole or any combination thereof in **any intoxication-related traffic offense in** a state**, county or municipal** court **or any combination thereof,** shall be treated as a prior **[**conviction**]** **plea of guilty or finding of guilty for purposes of this section**.

577.080. ABANDONING MOTOR VEHICLE — LAST OWNER OF RECORD DEEMED THE OWNER OF ABANDONED MOTOR VEHICLE, PROCEDURES — PENALTY — CIVIL LIABILITY. — 1. A person commits the crime of abandoning a motor vehicle**, vessel,** or trailer if he abandons any motor vehicle**, vessel,** or trailer on the right-of-way of any public road or state highway or on or in any of the waters in this state or on the banks of any stream, or on any land or water owned, operated or leased by the state, any board, department, agency or commission thereof, or any political subdivision thereof or on any land or water owned, operated or leased by the federal government or on any private real property owned by another without his consent.

2. For purposes of this section, the last owner of record of a motor vehicle**, vessel,** or trailer found abandoned and not shown to be transferred pursuant to sections 301.196 and 301.197, RSMo, shall be deemed prima facie to have been the owner of such motor vehicle**, vessel,** or trailer at the time it was abandoned and to have been the person who abandoned the motor vehicle**, vessel,** or trailer or caused or procured its abandonment. The registered owner of the abandoned motor vehicle**, vessel,** or trailer shall not be subject to the penalties provided by this section if the motor vehicle**, vessel,** or trailer was in the care, custody, or control of another person at the time of the violation. In such instance, the owner shall submit such evidence in an affidavit permitted by the court setting forth the name, address, and other pertinent information

of the person who leased, rented, or otherwise had care, custody, or control of the motor vehicle**, vessel,** or trailer at the time of the alleged violation. The affidavit submitted pursuant to this subsection shall be admissible in a court proceeding adjudicating the alleged violation and shall raise a rebuttable presumption that the person identified in the affidavit was in actual control of the motor vehicle**, vessel,** or trailer. In such case, the court has the authority to terminate the prosecution of the summons issued to the owner and issue a summons to the person identified in the affidavit as the operator. If the motor vehicle**, vessel,** or trailer is alleged to have been stolen, the owner of the motor vehicle**, vessel,** or trailer shall submit proof that a police report was filed in a timely manner indicating that the vehicle **or vessel** was stolen at the time of the alleged violation.

3. Abandoning a motor vehicle**, vessel,** or trailer is a class A misdemeanor.

4. Any person convicted pursuant to this section shall be civilly liable for all reasonable towing, storage, and administrative costs associated with the abandonment of the motor vehicle**, vessel,** or trailer. Any reasonable towing, storage, and administrative costs in excess of the value of the abandoned motor vehicle**, vessel,** or trailer that exist at the time the motor vehicle **or vessel** is transferred pursuant to section 304.156, RSMo, shall remain the liability of the person convicted pursuant to this section so long as the towing company, as defined in chapter 304, RSMo, provided the title owner and lienholders, as ascertained by the department of revenue records, a notice within the time frame and in the form as described in subsection 1 of section 304.156, RSMo.

SECTION B. EMERGENCY CLAUSE. — Because of the need to protect public safety and ensure that persons guilty of multiple intoxication-related traffic offenses receive an appropriate sentence, the repeal and reenactment of section 577.023 is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 577.023 of this act shall be in full force and effect upon its passage and approval.

Approved July 3, 2008

HB 1779 [SS SCS HCS HB 1779]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding telecommunications services, natural gas safety penalties, and excavation

AN ACT to repeal sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.030, 319.036, 319.037, 319.041, 319.045, 319.050, 386.020, 392.200, 392.220, 392.230, 392.245, 392.361, 392.370, 392.420, 392.450, 392.451, 392.480, 392.490, 392.510, 392.515, and 392.520, RSMo, and to enact in lieu thereof twenty-nine new sections relating to utility service provision, with an effective date for certain sections.

SECTION

A. Enacting clause.
319.015. Definitions.
319.016. Notification center participant, commission not required to be, when.
319.022. Notification centers, participation requirements and eligibility — names of owners and operators made available, when.
319.024. Public notice of excavations, duties of owner and operator.

319.025. Excavator must give notice and obtain information, when, how — notice to notification center, when — clarification of markings response — project plans provided, when — permit for highway excavation required.
319.026. Notice of excavator, form of — written record maintained — incorrect location of facility, duty of excavator — visible markings necessary to continue work.
319.027. Design requests, how made — marking location required.
319.029. Notification required prior to excavation.
319.030. Notification of location of underground facility, when, how — failure to provide notice of location, effect.
319.037. Excavation sites included in requirements — equipment prohibited at such sites.
319.041. Safe and prudent excavation required.
319.042. No abrogation of contractual obligations with railroads.
319.045. Notice if underground facility disturbed to notification center, when — duties of excavator — civil penalties — attorney general may bring action.
319.050. Exemptions from requirement to obtain information.
386.020. Definitions.
386.572. Natural gas safety standards, gas plants not to violate — maximum penalties for violations, how determined.
392.200. Adequate service — just and reasonable charges — unjust discrimination — unreasonable preference — reduced rates permitted for federal lifeline connection plan — delivery of telephone and telegraph messages — customer — specific pricing — term agreements, discount rates.
392.220. Rates, schedules, suspension of, when — revocation of certificate of service, penalty.
392.230. Charges for short and long distance service — power of commission to stay increased rates — hearing, requirements, small telephone company, requirements.
392.245. Companies to be regulated, when — maximum prices, determined how, changed how — classification — change of rates — nonwireless basic local telecommunications services, exempt from maximum allowable prices.
392.361. Classification of telecommunications company, services — procedure — effect of classification.
392.370. Transitionally competitive telecommunications services, classified when.
392.420. Regulations, modification of, company may request by petition, when — waiver, when.
392.450. Requirements, approval of certificates — commission to adopt rules — modification, when — federal law not preempted.
392.451. State adopts federal exemption for certain rural telephone companies.
392.480. Services to be offered under tariff.
392.510. Tariffs, bands and ranges allowed, when, requirements.
392.520. Private shared tenant services, coin operated telephone services, regulation of.
392.550. Interconnected voice over Internet protocol service, registration required — charges to apply — procedure for registration — authority of commission.
319.036. Exception to excavation notification requirements for agricultural property, when.
392.490. Tariff, filing procedures.
392.515. Interstate operator services, rates, commission to determine, how — traffic aggregator not to deny user access to company of choice.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.030, 319.036, 319.037, 319.041, 319.045, 319.050, 386.020, 392.200, 392.220, 392.230, 392.245, 392.361, 392.370, 392.420, 392.450, 392.451, 392.480, 392.490, 392.510, 392.515, and 392.520, RSMo, are repealed and twenty-nine new sections enacted in lieu thereof, to be known as sections 319.015, 319.016, 319.022, 319.024, 319.025, 319.026, 319.027, 319.029, 319.030, 319.037, 319.041, 319.042, 319.045, 319.050, 386.020, 386.572, 392.200, 392.220, 392.230, 392.245, 392.361, 392.370, 392.420, 392.450, 392.451, 392.480, 392.510, 392.520, and 392.550, to read as follows:

319.015. DEFINITIONS. — For the purposes of sections 319.010 to 319.050, the following terms mean:

(1) "Approximate location", a strip of land not wider than the width of the underground facility plus two feet on either side thereof. In situations where reinforced concrete, multiplicity of adjacent facilities or other unusual specified conditions interfere with location attempts, the owner or operator shall designate to the best of his or her ability an approximate location of greater width;

(2) **"Design request", a request from any person for facility location information for design purposes only;**

(3) "Emergency", either:

(a) A sudden, unexpected occurrence, presenting a clear and imminent danger demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services. "Unexpected occurrence" includes, but is not limited to, thunderstorms, high winds, ice or snow storms, fires, floods, earthquakes, or other soil or geologic movements, riots, accidents, water or wastewater pipe breaks, vandalism, or sabotage; or

(b) Any interruption in the generation, transmission, or distribution of electricity, or any damage to property or facilities that causes or could cause such an interruption;

(4) "Excavation", any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching, drilling, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry, the use of **[**high-velocity**]** **pressurized** air to disintegrate and suction to remove earth, rock and other materials, **[**and**]** the tilling of soil for agricultural or seeding purposes**, and the installation of marking flags and stakes for the location of underground facilities that are not driven** shall not be deemed excavation. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation;

(5) "Excavator", any person making one or more excavations who is required to make notices of excavation under the requirements of sections 319.010 to 319.050;

[(3)**]** **(6)** "Marking", the use of **[**stakes,**]** paint**, flags, stakes,** or other clearly identifiable materials to show the field location of underground facilities, or the area of proposed excavation, in accordance with the color code standard of the American Public Works Association. Unless otherwise provided by the American Public Works Association, the following color scheme shall be used: blue for potable water; purple for reclaimed water, irrigation and slurry lines; green for sewers and drain lines; red for electric, power lines, cables, conduit and lighting cables; orange for communications, including telephone, cable television, alarm or signal lines, cable or conduit; yellow for gas, oil, steam, petroleum or gaseous materials; white for proposed excavation; pink for temporary marking of construction project site features such as centerline and top of slope and toe of slope;

[(4)**]** **(7)** "Notification center", a statewide organization operating twenty-four hours a day, three hundred sixty-five days a year on a not-for-profit basis, supported by its participants, or by more than one operator of underground facilities, having as its principal purpose the statewide receipt and dissemination to participating owners and operators of underground facilities of information concerning intended excavation activities in the area where such owners and operators have underground facilities, and open to participation by any and all such owners and operators on a fair and uniform basis. Such notification center shall be governed by a board of directors elected by the membership and composed of representatives from each general membership group**, provided that one of the board members shall be a representative of the state highways and transportation commission so long as the commission is a participant in the notification center**;

(8) "Notification center participant", an underground facility owner who is a member and participant in the notification center;

[(5)**]** **(9)** "Permitted project", a project for which a permit for the work to be performed is required to be issued by a local, state or federal agency and, as a prerequisite to receiving such permit, the applicant is required to **[**locate all underground facilities in the area of the work and in the vicinity of the excavation and is required to notify each owner of such underground

facilities**] notify all underground facility owners in the area of the work for purposes of identifying the location of existing underground facilities**;

[(6)**] (10)** "Person", any individual, firm, joint venture, partnership, corporation, association, cooperative, municipality, political subdivision, governmental unit, department or agency and shall include a notification center and any trustee, receiver, assignee or personal representative thereof;

[(7)**] (11)** "Pipeline facility" includes, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of gas or the treatment of gas, or used or intended for use in the transportation of hazardous liquids including petroleum, or petroleum products;

[(8)**] (12)** "Preengineered project", a project which is approved by an agency or political subdivision of the state and for which the agency or political subdivision responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project and in such meeting all persons determined by the agency or political subdivision to have underground facilities located within the excavation area of the project are invited to attend and given an opportunity to verify or inform any agency or political subdivision of the location of their underground facilities, if any, within the excavation area and where the location of all known underground facilities are duly located or noted on the engineering drawing as specifications for the project;

[(9) "Residential property", any real estate used or intended to be used as a residence by not more than four families on which no underground facilities exist which are owned or operated by any party other than the owner of said property;**]**

(13) "State plane coordinates", a system of locating a point on a flat plane developed by the National Oceanic and Atmospheric Administration and utilized by state agencies, local governments, and other persons to designate the site of a construction project;

(14) "Trenchless excavation", horizontal excavation parallel to the surface of the earth which does not use trenching or vertical digging as the primary means of excavation, including but not limited to directional boring, tunneling, or auguring;

[(10)**] (15)** "Underground facility", any item of personal property which shall be buried or placed below ground for use in connection with the storage or conveyance of water, storm drainage, sewage, telecommunications service, cable television service, electricity, oil, gas, hazardous liquids or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments**, or appurtenances,** and those portions of pylons or other supports below ground that are within any public or private street, road or alley, right-of-way dedicated to the public use or utility easement of record, or prescriptive easement**[**; except that where**] . If** gas distribution lines or electric lines, telecommunications facilities, cable television facilities, water service lines, water system, storm drainage or sewer system lines **[**are and such lines or facilities**] , other than those used for vehicular traffic control, lighting of streets and highways and communications for emergency response, are located on private property and** are owned solely by the owner or owners of such **private** property, such lines or facilities receiving service shall not be considered underground facilities for purposes of this chapter**[**; provided, however**], except at locations where they cross or lie within an easement or right-of-way dedicated to public use or owned by a person other than the owner of the private property. Water and sanitary sewer lines providing service to private property that are owned solely by the owner of such property shall not be considered underground facilities at any location. Water, storm drainage, cross road drainage, or sewer lines owned by the state highways and transportation commission shall not be considered underground facilities at any location.** For railroads regulated by the Federal Railroad Administration, "underground facility" as used in sections 319.015 to 319.050 shall not include any excavating done by a railroad when such excavating is done entirely on land which the railroad owns or on which the railroad operates, or in the event of emergency, on adjacent land;

(16) "Underground facility owner", any person who owns or operates underground facilities as defined by this section;

[(11)**] (17)** "Working day", every day, except Saturday, Sunday or a legally declared local, state or federal holiday.

319.016. NOTIFICATION CENTER PARTICIPANT, COMMISSION NOT REQUIRED TO BE, WHEN. — Notwithstanding any provision of sections 319.010 to 319.050 to the contrary, the state highways and transportation commission shall not be required to be a notification center participant after December 31, 2011, but nothing in this section shall prohibit the commission from voluntarily choosing to be a notification center participant after that date.

319.022. NOTIFICATION CENTERS, PARTICIPATION REQUIREMENTS AND ELIGIBILITY — NAMES OF OWNERS AND OPERATORS MADE AVAILABLE, WHEN. — 1. **Any person, except a railroad regulated by the Federal Railroad Administration, who installs or otherwise owns or operates an underground facility shall become a participant in a notification center upon first acquiring or owning or operating such underground facility. Except as provided in section 319.016, all owners and operators of underground facilities within the state shall maintain participation in a notification center.**

2. All owners and operators of underground facilities which are located in a county of the first classification or second classification within the state who are not members of a notification center on August 28, 2001, shall become participants in the notification center prior to January 1, 2003. Any person who installs or otherwise becomes an owner or operator of an underground facility which is located within a county of the first classification or second classification on or after January 1, 2003, shall become a participant in the notification center within thirty days of acquiring or operating such underground facility. Beginning January 1, 2003, all owners and operators of underground facilities which are located in a county of the first classification or second classification within the state shall maintain participation in the notification center **except as provided otherwise in section 319.016**.

[2.**] 3.** All owners and operators of underground facilities which are located in a county of the third classification or fourth classification within the state who are not members of a notification center on August 28, 2001, shall become participants in the notification center prior to January 1, 2005. Any person who installs or otherwise becomes an owner or operator of an underground facility which is located within a county of the third classification or fourth classification on or after January 1, 2005, shall become a participant in the notification center within thirty days of acquiring or operating such underground facility. Beginning January 1, 2005, all owners and operators of underground facilities which are located in a county of the third classification or fourth classification within the state shall maintain participation in the notification center **except as provided otherwise in section 319.016**.

[3.**] 4.** The notification center shall maintain in its offices and make available to any **[**person**] notification center participant or excavator** upon request**,** a current list of the names and addresses of each **[**owner and operator participating in the**]** notification center **participant**, including the county or counties wherein each **[**owner or operator**] participant** has underground facilities. The notification center may charge a reasonable fee to **[**persons**] notification center participants or excavators** requesting such list as is necessary to recover the actual costs of printing and mailing.

[4.**] 5.** Excavators shall be informed of the availability of the list of **notification center** participants **[**in the notification center**]** required in subsection **[**2**] 3** of this section in the manner provided for in section 319.024.

[5.**] 6.** An annual audit or review of the notification center shall be performed by a certified public accountant and a report of the findings submitted to the speaker of the house of representatives and the president pro tem of the senate.

319.024. PUBLIC NOTICE OF EXCAVATIONS, DUTIES OF OWNER AND OPERATOR. — 1. Every person owning or operating an underground facility shall assist excavators and the general public in determining the location of underground facilities before excavation activities are begun or as may be required by subsection 6 of section 319.026 or subsection 1 of section 319.030 after an excavation has commenced. Methods of informing the public and excavators of the means of obtaining such information may, but need not, include advertising, including advertising in periodicals of general circulation or trade publications, information provided to professional or trade associations which routinely provide information to excavators or design professionals, or sponsoring meetings of excavators and design professionals for such purposes. Information provided by the notification center on behalf of persons owning or operating an underground facility shall be deemed in compliance with this section by such persons. Every person owning or operating underground facilities who has a written policy in determining the location of its underground facilities shall make available a copy of said policy to any **[**person**]** **notification center participant or excavator** upon request.

2. Every person owning or operating underground pipeline facilities shall, in addition to the requirements of subsection 1 of this section:

(1) Identify on a current basis, persons who normally engage in excavation activities in the area in which the pipeline is located. Every such person who is a participant in a notification center shall be deemed to comply with this subdivision if such notification center maintains and updates a list of the names and addresses of all excavators who have given notice of intent to excavate to such notification center during the previous **[**five years**]** **year** and provided the notification center shall, not less frequently than annually, provide public notification and actual notification to all excavators on such list of the existence and purpose of the notification center, and procedures for obtaining information from the notification center;

(2) Either directly or through the notification center, notify excavators and the public in the vicinity of his or her underground pipeline facility of the availability of the notification center by including the information set out in subsection 1 of section 319.025, in notifications required by the safety rules of the Missouri public service commission relating to its damage prevention program;

(3) Notify excavators annually who give notice of their intent to excavate of the type of marking to be provided and how to identify the markings.

319.025. EXCAVATOR MUST GIVE NOTICE AND OBTAIN INFORMATION, WHEN, HOW — NOTICE TO NOTIFICATION CENTER, WHEN — CLARIFICATION OF MARKINGS RESPONSE — PROJECT PLANS PROVIDED, WHEN — PERMIT FOR HIGHWAY EXCAVATION REQUIRED. — 1. Except as provided in **[**sections**]** **subsection 3 of section** 319.030 and **in section** 319.050, a person shall not make or begin any excavation in any public street, road or alley, right-of-way dedicated to the public use or utility easement of record or within any private street or private property without first giving notice to **the notification center** and obtaining information concerning the possible location of any underground facilities which may be affected by said excavation from **[**each and every owner and operator of underground facilities**]** **underground facility owners** whose **[**name appears**]** **names appear** on the current list of participants in the notification center **and who were communicated to the excavator as notification center participants who would be informed of the excavation notice**. Prior to January 1, 2003, a person shall not make or begin any excavation pursuant to this subsection without also making notice to owners or operators of underground facilities which do not participate in a notification center and whose name appears on the current list of the recorder of deeds in and for the county in which the excavation is to occur. Beginning January 1, 2003, notice to the notification center of proposed excavation shall be deemed notice to all owners and operators of underground facilities. The notice referred to in this section shall comply with the provisions of section 319.026. **As part of the process to request the locating of underground facilities and having them properly marked, the notification center shall ask excavators to identify**

whether or not the proposed excavation will be on a public right-of-way or easement dedicated to public use for vehicular traffic.

2. An excavator's notice to owners and operators of underground facilities participating in the notification center pursuant to section 319.022 is ineffective for purposes of subsection 1 of this section unless given to such notification center. Prior to January 1, 2003, the notice required by subsection 1 of this section shall be given directly to owners or operators of underground facilities who are not represented by a notification center.

3. **[**If the excavator is engaged in trenching, ditching, drilling, well-drilling or -driving, augering or boring and, if upon notification by the excavator pursuant to section 319.026, the owner or operator notifies the excavator that the area of excavation cannot be determined from the description provided by the excavator, the excavator shall mark the proposed area of excavation prior to marking of location by the owner or operator of the facility. For any excavation, as defined in section 319.015,**]** **Notification center participants shall be relieved of the responsibility to respond to a notice of intent to excavate received directly from the person intending to commence an excavation, except for requests for clarification of markings through on-site meetings as provided in subsection 1 of section 319.030 and requests for locations at the time of an emergency as provided by section 319.050.**

4. If the owner or operator notifies the excavator that the area of excavation cannot be determined from the description provided by the excavator through the notice required by this section, **[**the owner or operator may require**]** the excavator **[**to provide**]** **shall provide clarification of the area of excavation by markings or by providing** project plans to the owner or operator, or **[**meet**]** **by meeting** on the site of the excavation with representatives of the owner or operator as provided by subsection 1 of section 319.030. **[**The provisions of this subsection shall not apply to owners of residential property performing excavations on their own property.**]**

5. Notwithstanding the provisions of this section to the contrary, a person shall not make or begin any excavation in any state highway, or on the right-of-way of any state highway, without first obtaining a permit from the state highways and transportation commission pursuant to section 227.240, RSMo, provided however, the provisions of this subsection shall not apply to railroad right of way owned or operated by a railroad.

319.026. NOTICE OF EXCAVATOR, FORM OF — WRITTEN RECORD MAINTAINED — INCORRECT LOCATION OF FACILITY, DUTY OF EXCAVATOR — VISIBLE MARKINGS NECESSARY TO CONTINUE WORK. — 1. An excavator shall serve notice of intent to excavate to the notification center by toll-free telephone number operated on a twenty-four hour per day, seven day per week basis or**[**, prior to January 1, 2003, to individual nonparticipant owners or operators**]** **by facsimile or by completing notice via the Internet** at least two working days, but not more than ten working days, before **the expected date of** commencing the excavation activity. The notification center receiving such notice shall inform the excavator of all **[**owners, operators and other persons**]** **notification center participants** to whom such notice will be transmitted and shall promptly transmit **all details of** such notice **provided under subsection 2 of this section** to every **[**public utility, municipal corporation and all persons owning or operating an underground facility**]** **notification center participant** in the area of excavation **[**and which are participants in and have registered their locations with the notification center. The notification center receiving such notice shall solicit all information required in subsection 2 of this section from the excavator and shall transmit all details of such notice as required by this section**]**.

2. **[**Each notice**]** **Notices** of intent to excavate given pursuant to this section shall contain **the following information:**

(1) The name**[**, address**]** and telephone number **[**and facsimile number, if any,**]** of the person filing the notice of **[**intent,**]** **excavation, if the telephone number is different than that**

of the excavator, and the name, address **[**and**] ,** telephone number of the excavator**[**,**] and whether the excavator's telephone is equipped with a recording device;**

(2) The date the excavation activity is **expected** to commence, the depth of planned excavation and, if applicable, that the use of explosives is anticipated on the excavation site, and the type of excavation being planned, including whether the excavation involves **[**tunneling or horizontal boring. The notice shall state whether someone is available between 8:00 a.m. and 5:00 p.m. on working days at the telephone number given and whether the excavator's telephone is equipped with a recording device. The notice shall also specify**] trenchless excavation;**

(3) The facsimile number, email address, and cellular telephone number of the excavator, if any;

(4) The name of the person primarily responsible for conducting the excavation or managing the excavation process, and if any of the information stated in subdivisions (1) or (3) of this subsection is different for the person primarily responsible for the excavation, the notice shall also state the same information for that person;

(5) A detailed description accepted by the notification center sufficient for the location of the excavation by any one or more of the following means: by reference to a specific street address, **[**or by reference to specific quarter section, and shall state whether excavation is to take place within the city limits. The notice shall also include**] or by description of location in relation to the nearest numbered, lettered, or named state or county road or city street for which a road sign is posted, or by latitude and longitude including the appropriate description in degrees, minutes, and seconds, or by state plane coordinates;**

(6) A description of the site of excavation by approximate distance and direction from the nearest state or county road or city street or intersection of such roads or streets unless previously provided under subdivision (5) of this subsection, and the proximity of the site to any prominent landmarks;

(7) A description of the location or locations of the excavation at the site described by direction and approximate distance in relation to prominent features of the site, such as existing buildings or roadways**[**. For excavations occurring outside the limits of an incorporated city, the following additional information shall be provided: the location of the excavation in relation to the nearest numbered, lettered or named state or county road which is posted on a road sign, including the approximate distance from the nearest intersection or prominent landmark; and, if the excavation is not on or near a posted numbered, lettered or named state or county road,**] ;**

(8) Directions as to how to reach the site of the excavation from the nearest such road**, if the excavation is not on or near a posted numbered, lettered, or named state or county road or city street**.

3. The notification center receiving such notice shall solicit all information required **[**in this**] by** subsection **2 of this section** and shall require the excavator to provide all such information before notice by the excavator is deemed to be completed pursuant to sections 319.015 to 319.050. The notification center shall transmit all details of such notice as required **[**in subsection 1 of**] by** this section.

[3.**] 4.** A **[**written**]** record of each notice of intent to excavate shall be maintained by the notification center or, prior to January 1, 2003, by the nonmember owner or operator receiving direct notifications for a period of five years. The record shall include the date the notice was received and all information required by subsection 2 of this section which was provided by the excavator **and a record of the underground facility owners notified by the notification center**. If the **[**recipient**] notification center** creates a record of the notice by **[**computer or**]** telephonic recording, such record of the original notice shall be maintained for one year from the date of receipt. **Records of notices to excavate maintained by the notification center in electronic form shall be deemed to be records under this subsection.** Persons holding records of notices of intent to excavate and records of information provided to the excavator by the notification center or owner or operator of the facility, shall make copies of such records

available for a reasonable copying fee upon the request of the owner or operator of the underground facilities or the excavator filing the notice.

[4.**]** **5.** If in the course of excavation the person responsible for the excavation operations discovers that the owner or operator of the underground facility who is a participant in a notification center has incorrectly located the underground facility, he or she shall notify the notification center which shall inform the **[**participating owner or operator**]** **notification center participant**. If the owner or operator of the underground facility is not a participant in a notification center prior to the January 1, 2003, effective date for mandatory participation pursuant to section 319.022, the person responsible for the excavation shall notify the owner. The person responsible for maintaining records of the location of underground facilities for the **[**owner or operator**]** **notification center participant** shall correct such records to show the actual location of such facilities, if current records are incorrect.

[5. Notwithstanding the fact that a project is a preengineered project or a permitted project, excavators connected therewith shall be required to give notification in accordance with this section prior to commencement of excavation.**]**

6. When markings have been provided in response to a notice of intent to excavate, excavators may **commence or** continue to work within the area described in the notice **for** so long as the markings are visible. If markings become unusable due to weather, construction or other cause, the excavator shall contact the notification center to request remarking. Such notice shall be given in the same manner as original notice of intent to excavate, and the owner or operator shall remark the site in the same manner, within the same time, as required in response to an original notice of intent to excavate. Each excavator shall exercise reasonable care not to unnecessarily disturb or obliterate markings provided for location of underground facilities. If remarking is required due to the excavator's failure to exercise reasonable care, or if repeated unnecessary requests for remarking are made by an excavator even though the markings are visible and usable, the excavator may be liable to the owner or operator for the reasonable cost of such remarking.

319.027. DESIGN REQUESTS, HOW MADE — MARKING LOCATION REQUIRED. — 1. Any person may make design requests by contacting the notification center. Such design requests shall include all information deemed necessary by the notification center to complete the notice, including the identification of the person and a description of the location of the project being designed and other information similar to that required of excavators under section 319.026.

2. Design requests shall be made to the notification center at least five working days, but not more than ten working days, before the date the person has requested receiving the information from the underground facility owner. Upon receipt of a design request, the notification center shall inform the person of the name of all notification center participants to whom the notice will be transmitted and shall promptly transmit such notice to the appropriate underground facility owners.

3. Every underground facility owner who receives a design request shall mark the location of the facility, or contact the person making the request, within five working days after the date the notice was received from the notification center. If the person making the request was contacted as an alternative to marking location, the person and the underground facility owner shall mutually agree on a schedule and method for providing the information.

4. No excavation may be commenced based upon information received through a design request. Obtaining information through a design request shall not excuse any person commencing an excavation from making notice and obtaining information under sections 319.025 and 319.026 concerning the possible location of any underground facilities which may be affected.

319.029. NOTIFICATION REQUIRED PRIOR TO EXCAVATION. — Notwithstanding the fact that a project is a preengineered project or a permitted project, or that a design request was previously made, excavators connected therewith shall be required to give notification in accordance with sections 319.025 and 319.026 prior to commencement of excavation.

319.030. NOTIFICATION OF LOCATION OF UNDERGROUND FACILITY, WHEN, HOW — FAILURE TO PROVIDE NOTICE OF LOCATION, EFFECT. — 1. Every person owning or operating an underground facility to whom notice of intent to excavate is required to be given shall, upon receipt of such notice as provided in this section from a person intending to commence an excavation, inform the excavator as promptly as practical, but not in excess of two working days **[**from receipt of the notice**]**, unless otherwise mutually agreed, of the approximate location of underground facilities in or near the area of the excavation so as to enable the person engaged in the excavation work to locate the facilities in advance of and during the excavation work. **The two working days provided for notice in this subsection and subsection 1 of section 319.026, shall begin at 12:00 a.m. following the receipt of the request by the notification center.** If the information available to the owner or operator of a pipeline facility or an underground electric or communications cable discloses that valves, vaults or other appurtenances are located in or near the area of excavation, the owner or operator shall either inform the excavator of the approximate location of such appurtenances at the same time and in the same manner as the approximate location of the remainder of the facility is provided, or shall at such time inform the excavator that appurtenances exist in the area and provide a telephone number through which the excavator may contact a representative of the owner or operator who will meet at the site within one working day after request from the excavator and at such meeting furnish the excavator with the available information about the location and nature of such appurtenances. If the excavator states in the notice of intent to excavate that the excavation will involve **[**tunneling or horizontal boring**]** **trenchless technology**, the owner or operator shall inform the excavator of the depth, to the best of his or her knowledge or ability, of the facility according to the records of the owner or operator. The owner or operator shall provide the approximate location of underground facilities by use of markings. If **flags or** stakes are used, **[**staking**]** **such marking** shall be consistent with the color code and other standards for ground markings. Persons representing the excavator and the owner or operator shall meet on the site of excavation within two working days of a request by either person for such meeting for the purpose of clarifying markings, or upon agreement of the excavator and owner or operator, such meeting may be an alternate means of providing the location of facilities by originally marking the approximate location of the facility at the time of the meeting. If upon receipt of a notice of intent to excavate, an owner or operator determines that he or she neither owns or operates underground facilities in or near the area of excavation, the owner or operator shall within two working days after receipt of the notice, inform the excavator that the owner or operator has no facilities located in the area of the proposed excavation. **[**If the notice of intent to excavate provided to the owner or operator of the underground facility by the notification center states that a person is available at the telephone number given in the notice between 8:00 a.m. and 5:00 p.m. on each working day or that the excavator's telephone is equipped with a recording device, or states a facsimile number for the excavator, the owner or operator shall make actual notice of no facilities in the area of the excavation described in the notice by one or more of the following methods: calling the telephone number given between 8:00 a.m. and 5:00 p.m. on a working day; leaving a message on the excavator's recording device; transmitting a facsimile message to the excavator; marking "no facilities" or "clear" at the site of excavation; or verbally informing the excavator at the site of excavation. If the notice of intent to excavate provided to the owner or operator does not indicate that a person is available at the telephone number given in the notice between 8:00 a.m. and 5:00 p.m. on each working day or that the excavator's telephone is equipped with a recording device or that a facsimile number is provided for receiving facsimile messages, then the owner or operator may attempt to notify the excavator of no facilities in the

area of excavation by any of the methods indicated above; however, two documented attempts by the owner or operator to reach such an excavator by telephone shall constitute compliance with this subsection.**]** **The owner or operator of the underground facility shall make notice to the excavator that no facilities are located in the area of excavation by contacting the excavator by any of the following methods:**

(1) By calling the primary number of the excavator or by calling the telephone number of the responsible person as provided by the excavator under subdivision (4) of subsection 2 of section 319.026;

(2) By leaving a message on the recording device for such numbers;

(3) By calling the cellular telephone number of the excavator or responsible person;

(4) By notifying the excavator by facsimile or electronic mail at numbers or addresses stated by the excavator in the notice of excavation made under subsection 2 of section 319.026;

(5) By marking "clear" or "OK" at the site of excavation; or

(6) By verbally informing the excavator in person.

If the only means of contacting the excavator is one or more telephone numbers provided by the excavator in the notice of excavation under section 319.026, then two attempts by the underground facility owner to contact the excavator at one of the telephone numbers provided shall constitute compliance with this subsection.

2. A record of the date and means of informing the excavator that no facilities were located by the owner or operator shall be included in the written records **[**required by subsection 3 of section 319.026**]** **of the underground facility owner regarding each specific notice of excavation**.

[2. Owners and operators of underground facilities who are participants in the notification center according to the current list maintained in the offices of the notification center shall be relieved of the responsibility to respond to notices of intent to excavate received directly from the person intending to commence an excavation, except for requests for clarification of markings through on-site meetings and requests for locations at the time of an emergency as provided by section 319.050.**]**

3. In the event that a person owning or operating an underground facility fails to comply with the provisions of subsection 1 of this section after notice given by an excavator in compliance with section 319.026, the excavator, prior to commencing the excavation, shall give a second notice to the **[**same entity to whom the original notice was made**]** **notification center** as required by section 319.026 **stating that there has been no response to the original notice given under section 319.026**. **[**If,**]** After the receipt of the **[**second**]** notice **stating there has been "no response"**, the owner or operator of an underground facility **[**fails to provide the excavator with location information during the next working day**]** **shall, within two hours of the receipt of such notice, mark its facilities or contact and inform the excavator of when the facilities will be marked; provided, however, that for "no response" notices made to the notification center by 2:00 p.m., the markings shall be completed on the working day the notice is made to the notification center, and provided that for "no response" notices made to the notification center after 2:00 p.m., the markings shall be completed no later than 10:00 a.m. on the next working day. If an underground facility owner fails to mark its facilities or contact the excavator as required by this subsection**, the excavator may commence the excavation. Nothing in this subsection shall excuse the excavator from exercising the degree of care in making the excavation as is otherwise required by law.

4. For purposes of this section, a period of two working days begins **[**upon receipt of the excavator's notice of intent to excavate or upon receipt of a request for a meeting and shall end on the second working day thereafter at the same time of day. If the excavator's notice of intent to excavate or a request for a meeting is received on a working day before 8:00 a.m., such period of time shall begin at 8:00 a.m. of that day. If the excavator's notice of intent to excavate or a

request for a meeting is received after 5:00 p.m. on a working day, or at any time on a day that is not a working day, then such period of time shall begin at 8:00 a.m. of the first working day after the day of actual receipt**] at 12:00 a.m. following when the request is made**.

319.037. EXCAVATION SITES INCLUDED IN REQUIREMENTS — EQUIPMENT PROHIBITED AT SUCH SITES. — 1. Notwithstanding any other provision of law to the contrary, the procedures and requirements set forth in this section shall apply on the site of any excavation involving **[**horizontal boring**] trenchless excavation**, including directional drilling, where the approximate location of underground facilities has been marked in compliance with section 319.030 and where any part of the walls of the intended bore are within the marked approximate location of the underground facility.

2. The excavator shall not use power-driven equipment for **[**horizontal boring**] trenchless excavation**, including directional drilling, within the marked approximate location of such underground facilities until the excavator has made careful and prudent efforts to confirm the horizontal and vertical location thereof in the vicinity of the proposed excavation through methods appropriate to the geologic and weather conditions, and the nature of the facility, such as the use of electronic locating devices, hand digging, pot holing when practical, soft digging, vacuum methods, use of pressurized air or water, pneumatic hand tools or other noninvasive methods as such methods are developed. Such methods of confirming location shall not violate established safety practices. Nothing in this subsection shall authorize any person other than the owner or operator of a facility to attach an electronic locating device to any underground facility. For excavations paralleling the underground facility, such efforts to confirm the location of the facility shall be made at careful and prudent intervals. The excavator shall also make careful and prudent efforts by such means as are appropriate to the geologic and weather conditions and the nature of the facility, to confirm the horizontal and vertical location of the boring device during boring operations. Notwithstanding the foregoing, the excavator shall not be required to confirm the horizontal or vertical location of the underground facilities if the excavator, using the methods described in this section, excavates a hole over the underground facilities to a depth two feet or more below the planned boring path and then carefully and prudently monitors the horizontal and vertical location of the boring device in a manner calculated to enable the device to be visually observed by the excavator as it crosses the entire width of the marked approximate location of the underground facilities.

319.041. SAFE AND PRUDENT EXCAVATION REQUIRED. — Nothing in the foregoing shall relieve an excavator from the obligation to excavate in a safe and prudent manner, nor shall it absolve an excavator from liability for damage to legally installed facilities. **[**Notwithstanding any provision of law to the contrary, nothing in this chapter shall abrogate any contractual provisions entered into between any railroad and any other party owning or operating an underground facility within the railroad's right-of-way.**]**

319.042. NO ABROGATION OF CONTRACTUAL OBLIGATIONS WITH RAILROADS. — Notwithstanding any provision of law to the contrary, nothing in this chapter shall abrogate any contractual provisions entered into between any railroad and any other party owning or operating an underground facility within the railroad's right-of-way. For railroads regulated by the Federal Railroad Administration, sections 319.015 to 319.050 shall not include any underground facility owned or operated by a railroad on land which the railroad owns or any excavation done by a railroad when such excavation is done entirely on land which the railroad owns.

319.045. NOTICE IF UNDERGROUND FACILITY DISTURBED TO NOTIFICATION CENTER, WHEN — DUTIES OF EXCAVATOR — CIVIL PENALTIES — ATTORNEY GENERAL MAY BRING ACTION. — 1. In the event of any damage or dislocation or disturbance of any underground

facility in connection with any excavation, the person responsible for the excavation operations shall immediately notify the notification center **[**and the owner or operator of the facility or the owner or operator, if known, if it is not a participant in the notification center prior to January 1, 2003. On or after January 1, 2003, the responsible party shall notify the notification center only**] . This subsection shall be deemed to require reporting of any damage, dislocation, or disturbance to trace wires, encasements, cathode protection, permanent above-ground stakes or other such items utilized for protection of the underground facility**.

2. In the event of any damage or dislocation or disturbance to any underground facility **or any protective devices required to be reported by the excavator under subsection 1 of this section,** in advance of or during the excavation work, the person responsible for the excavation operations shall not conceal or attempt to conceal such damage or dislocation or disturbance, nor shall that person attempt or make repairs to the facility unless authorized by the owner or operator of the facility. In the case of sewer lines or facilities, emergency temporary repairs may be made by the excavator after notification without the owners' or operators' authorization to prevent further damage to the facilities. Such emergency repairs shall not relieve the excavator of responsibility to make notification as required by subsection 1 of this section.

3. Any person who violates in any material respect the provisions of section 319.022, **[**319.023,**]** 319.025, 319.026, **319.029,** 319.030, 319.037**,** or 319.045 or who willfully damages an underground facility shall be liable to the state of Missouri for a civil penalty of up to ten thousand dollars for each violation for each day such violation persists, except that the maximum penalty for violation of the provisions of sections 319.010 to 319.050 shall not exceed five hundred thousand dollars for any related series of violations. An action to recover such civil penalty may be brought by the attorney general or a prosecuting attorney on behalf of the state of Missouri in any appropriate circuit court of this state. Trial thereof shall be before the court, which shall consider the nature, circumstances and gravity of the violation, and with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty, and such other matters as justice may require in determining the amount of penalty imposed.

4. The attorney general may bring an action in any appropriate circuit court of this state for equitable relief to redress or restrain a violation by any person of any provision of sections 319.010 to 319.050. The court may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, temporary or permanent.

319.050. EXEMPTIONS FROM REQUIREMENT TO OBTAIN INFORMATION. — The provisions of sections 319.025 and 319.026 shall not apply to any **[**utility which is repairing or replacing any of its facilities due to damage caused during an unexpected occurrence or when making an excavation at times of emergency resulting from a sudden, unexpected occurrence, and presenting a clear and imminent danger demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. "Unexpected occurrence" includes, but is not limited to, thunderstorms, high winds, ice or snow storms, fires, floods, earthquakes, or other soil or geologic movements, riots, accidents, water pipe breaks, vandalism or sabotage which cause damage to surface or subsurface facilities requiring immediate repair**] excavation when necessary due to an emergency as defined in section 319.015**. An **[**excavator or utility**] excavation** may proceed regarding such emergency, provided all reasonable precautions have been taken to protect the underground facilities. In any such case, the excavator **[**or utility**]** shall give notification, substantially in compliance with section 319.026, as soon as practical, and upon being notified that an emergency exists, each **[**owner and operator of an**]** underground facility **owner** in the area shall **[**immediately provide all location information reasonably available to any excavator who requests the same**] , within two hours after receiving such notice, provide markings or contact the excavator with any information**

immediately available to assist the excavator and shall inform the excavator if not able to mark within the two hours of when the underground facility will be marked at the site of the emergency. The excavator may be liable to the owner or operator for costs directly associated with the locating of any such underground facility relating to a notification of an emergency that does not meet the definition of "emergency" as stated in section 319.015.

386.020. DEFINITIONS. — As used in this chapter, the following words and phrases mean:

(1) "Alternative local exchange telecommunications company", a local exchange telecommunications company certified by the commission to provide basic or nonbasic local telecommunications service or switched exchange access service, or any combination of such services, in a specific geographic area subsequent to December 31, 1995;

(2) "Alternative operator services company", any certificated interexchange telecommunications company which receives more than forty percent of its annual Missouri intrastate telecommunications service revenues from the provision of operator services pursuant to operator services contracts with traffic aggregators;

(3) "Basic interexchange telecommunications service" includes, at a minimum, two-way switched voice service between points in different local calling scopes as determined by the commission and shall include other services as determined by the commission by rule upon periodic review and update;

(4) "Basic local telecommunications service", two-way switched voice service within a local calling scope as determined by the commission comprised of any of the following services and their recurring and nonrecurring charges:

(a) Multiparty, single line, including installation, touchtone dialing, and any applicable mileage or zone charges;

(b) Assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual-party relay service for the hearing impaired and speech impaired;

(c) Access to local emergency services including, but not limited to, 911 service established by local authorities;

(d) Access to basic local operator services;

(e) Access to basic local directory assistance;

(f) Standard intercept service;

(g) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission;

(h) One standard white pages directory listing.

Basic local telecommunications service does not include optional toll-free calling outside a local calling scope but within a community of interest, available for an additional monthly fee or the offering or provision of basic local telecommunications service at private shared-tenant service locations;

(5) "Cable television service", the one-way transmission to subscribers of video programming or other programming service and the subscriber interaction, if any, which is required for the selection of such video programming or other programming service;

(6) "Carrier of last resort", any telecommunications company which is obligated to offer basic local telecommunications service to all customers who request service in a geographic area defined by the commission and cannot abandon this obligation without approval from the commission;

(7) "Commission", the "Public Service Commission" hereby created;

(8) "Commissioner", one of the members of the commission;

(9) "Competitive telecommunications company", a telecommunications company which has been classified as such by the commission pursuant to section 392.361 **or 392.245**, RSMo;

(10) "Competitive telecommunications service", a telecommunications service which has been classified as such by the commission pursuant to section 392.245, RSMo, or to section 392.361, RSMo, or which has become a competitive telecommunications service pursuant to section 392.370, RSMo;

(11) "Corporation" includes a corporation, company, association and joint stock association or company;

(12) "Customer-owned pay telephone", a privately owned telecommunications device that is not owned, leased or otherwise controlled by a local exchange telecommunications company and which provides telecommunications services for a use fee to the general public;

(13) "Effective competition" shall be determined by the commission based on:

(a) The extent to which services are available from alternative providers in the relevant market;

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;

(c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 392.185, RSMo, are being advanced;

(d) Existing economic or regulatory barriers to entry; and

(e) Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of chapter 392, RSMo;

(14) "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

(15) "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

(16) "Exchange", a geographical area for the administration of telecommunications services, established and described by the tariff of a telecommunications company providing basic local telecommunications service;

(17) "Exchange access service", a service provided by a local exchange telecommunications company which enables a telecommunications company or other customer to enter and exit the local exchange telecommunications network in order to originate or terminate interexchange telecommunications service;

(18) "Gas corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or any political subdivision, county or municipality thereof;

(19) "Gas plant" includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power;

(20) "Heating company" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, managing or controlling any plant or property for

manufacturing and distributing and selling, for distribution, or distributing hot or cold water, steam or currents of hot or cold air for motive power, heating, cooking, or for any public use or service, in any city, town or village in this state; provided, that no agency or authority created by or operated pursuant to an interstate compact established pursuant to section 70.370, RSMo, shall be a heating company or subject to regulation by the commission;

(21) "High-cost area", a geographic area, which shall follow exchange boundaries and be no smaller than an exchange nor larger than a local calling scope, where the cost of providing basic local telecommunications service as determined by the commission, giving due regard to recovery of an appropriate share of joint and common costs as well as those costs related to carrier of last resort obligations, exceeds the rate for basic local telecommunications service found reasonable by the commission;

(22) "Incumbent local exchange telecommunications company", a local exchange telecommunications company authorized to provide basic local telecommunications service in a specific geographic area as of December 31, 1995, or a successor in interest to such a company;

(23) **"Interconnected voice over Internet protocol service", service that:**

(a) Enables real-time, two-way voice communications;

(b) Requires a broadband connection from the user's location;

(c) Requires Internet protocol-compatible customer premises equipment; and

(d) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network;

(24) "Interexchange telecommunications company", any company engaged in the provision of interexchange telecommunications service;

[(24)**] (25)** "Interexchange telecommunications service", telecommunications service between points in two or more exchanges;

[(25)**] (26)** "InterLATA", interexchange telecommunications service between points in different local access and transportation areas;

[(26)**] (27)** "IntraLATA", interexchange telecommunications service between points within the same local access and transportation area;

[(27)**] (28)** "Light rail" includes every rail transportation system in which one or more rail vehicles are propelled electrically by overhead catenary wire upon tracks located substantially within an urban area and are operated exclusively in the transportation of passengers and their baggage, and including all bridges, tunnels, equipment, switches, spurs, tracks, stations, used in connection with the operation of light rail;

[(28)**] (29)** "Line" includes route;

[(29)**] (30)** "Local access and transportation area" or "LATA", contiguous geographic area approved by the U.S. District Court for the District of Columbia in United States v. Western Electric, Civil Action No. 82-0192 that defines the permissible areas of operations for the Bell Operating companies;

[(30)**] (31)** "Local exchange telecommunications company", any company engaged in the provision of local exchange telecommunications service. A local exchange telecommunications company shall be considered a "large local exchange telecommunications company" if it has at least one hundred thousand access lines in Missouri and a "small local exchange telecommunications company" if it has less than one hundred thousand access lines in Missouri;

[(31)**] (32)** "Local exchange telecommunications service", telecommunications service between points within an exchange;

[(32)**] (33)** "Long-run incremental cost", the change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology, and excluding any costs that, in the long run, are not brought into existence as a direct result of the increment of output. The relevant increment of output shall be the level of output necessary to satisfy total current demand levels for the service in question, or, for new services, demand levels that can be demonstrably anticipated;

[(33)**]** **(34)** "Municipality" includes a city, village or town;

[(34)**]** **(35)** "Nonbasic telecommunications services" shall be all regulated telecommunications services other than basic local and exchange access telecommunications services, and shall include the services identified in paragraphs (d) and (e) of subdivision (4) of this section. Any retail telecommunications service offered for the first time after August 28, 1996, shall be classified as a nonbasic telecommunications service, including any new service which does not replace an existing service;

[(35)**]** **(36)** "Noncompetitive telecommunications company", a telecommunications company other than a competitive telecommunications company or a transitionally competitive telecommunications company;

[(36)**]** **(37)** "Noncompetitive telecommunications service", a telecommunications service other than a competitive or transitionally competitive telecommunications service;

[(37)**]** **(38)** "Operator services", operator-assisted interexchange telecommunications service by means of either human or automated call intervention and includes, but is not limited to, billing or completion of calling card, collect, person-to-person, station-to-station or third number billed calls;

[(38)**]** **(39)** "Operator services contract", any agreement between a traffic aggregator and a certificated interexchange telecommunications company to provide operator services at a traffic aggregator location;

[(39)**]** **(40)** "Person" includes an individual, and a firm or copartnership;

[(40)**]** **(41)** "Private shared tenant services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises as authorized by the commission by a commercial-shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of local exchange telecommunications companies and to interexchange telecommunications companies;

[(41)**]** **(42)** "Private telecommunications system", a telecommunications system controlled by a person or corporation for the sole and exclusive use of such person, corporation or legal or corporate affiliate thereof;

[(42)**]** **(43)** "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter;

[(43)**]** **(44)** "Railroad" includes every railroad and railway, other than street railroad or light rail, by whatsoever power operated for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations, real estate and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad;

[(44)**]** **(45)** "Railroad corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, holding, operating, controlling or managing any railroad or railway as defined in this section, or any cars or other equipment used thereon or in connection therewith;

[(45)**]** **(46)** "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof;

[(46)**]** **(47)** "Resale of telecommunications service", the offering or providing of telecommunications service primarily through the use of services or facilities owned or provided

by a separate telecommunications company, but does not include the offering or providing of private shared tenant services;

[(47)**] (48)** "Service" includes not only the use and accommodations afforded consumers or patrons, but also any product or commodity furnished by any corporation, person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility, and to the use and accommodation of consumers or patrons;

[(48)**] (49)** "Sewer corporation" includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets;

[(49)**] (50)** "Sewer system" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

[(50)**] (51)** "Street railroad" includes every railroad by whatsoever type of power operated, and all extensions and branches thereof and supplementary facilities thereto by whatsoever type of vehicle operated, for public use in the conveyance of persons or property for compensation, mainly providing local transportation service upon the streets, highways and public places in a municipality, or in and adjacent to a municipality, and including all cars, buses and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits, cables, subways, tunnels, stations, terminals and real estate of every kind used, operated or owned in connection therewith but this term shall not include light rail as defined in this section; and the term "street railroad" when used in this chapter shall also include all motor bus and trolley bus lines and routes and similar local transportation facilities, and the rolling stock and other equipment thereof and the appurtenances thereto, when operated as a part of a street railroad or trolley bus local transportation system, or in conjunction therewith or supplementary thereto, but such term shall not include a railroad constituting or used as part of a trunk line railroad system and any street railroad as defined above which shall be converted wholly to motor bus operation shall nevertheless continue to be included within the term "street railroad" as used herein;

[(51)**] (52)** "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state;

[(52)**] (53)** "Telecommunications facilities" includes lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service;

[(53)**] (54)** "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

(a) The rent, sale, lease, or exchange for other value received of customer premises equipment except for customer premises equipment owned by a telephone company certificated or otherwise authorized to provide telephone service prior to September 28, 1987, and provided under tariff or in inventory on January 1, 1983, which must be detariffed no later than December 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and except for customer premises equipment owned or provided by a telecommunications company and used for answering 911 or emergency calls;

(b) Answering services and paging services;

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;

(d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests;

(e) Services provided by a private telecommunications system;

(f) Cable television service;

(g) The installation and maintenance of inside wire within a customer's premises;

(h) Electronic publishing services; **[**or**]**

(i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission; **or**

(j) Interconnected voice over Internet protocol service;

[(54)**] (55)** "Telephone cooperative", every corporation defined as a telecommunications company in this section, in which at least ninety percent of those persons and corporations subscribing to receive local telecommunications service from the corporation own at least ninety percent of the corporation's outstanding and issued capital stock and in which no subscriber owns more than two shares of the corporation's outstanding and issued capital stock;

[(55)**] (56)** "Traffic aggregator", any person, firm, partnership or corporation which furnishes a telephone for use by the public and includes, but is not limited to, telephones located in rooms, offices and similar locations in hotels, motels, hospitals, colleges, universities, airports and public or customer-owned pay telephone locations, whether or not coin operated;

[(56)**] (57)** "Transitionally competitive telecommunications company", an interexchange telecommunications company which provides any noncompetitive or transitionally competitive telecommunications service, except for an interexchange telecommunications company which provides only noncompetitive telecommunications service;

[(57)**] (58)** "Transitionally competitive telecommunications service", a telecommunications service offered by a noncompetitive or transitionally competitive telecommunications company and classified as transitionally competitive by the commission pursuant to section 392.361 or 392.370, RSMo;

[(58)**] (59)** "Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water;

[(59)**] (60)** "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.

386.572. NATURAL GAS SAFETY STANDARDS, GAS PLANTS NOT TO VIOLATE — MAXIMUM PENALTIES FOR VIOLATIONS, HOW DETERMINED. — 1. No corporation, person, public utility, or municipality that owns any gas plant shall violate any law or any order, decision, decree, rule, direction, demand, or requirement of the commission or any part or portion thereof relating to federally mandated natural gas safety standards. Notwithstanding the above, a municipality that owns any gas plant shall be subject to the provisions of this section only for violations of natural gas safety laws, rules, or orders.

2. The maximum penalties for violations of federally mandated natural gas safety standards, or such stricter natural gas safety standards or rules as may be approved by

the commission, shall not be greater than fifteen thousand dollars for each violation with a maximum penalty for a continuing violation or a multiple series of violations of the same standard or rule provision not to exceed one hundred fifty thousand dollars, notwithstanding any provisions of subsection 1 of section 386.570 to the contrary. The maximum penalty for each violation shall increase to twenty thousand dollars, effective January 1, 2015, twenty-five thousand dollars, effective January 1, 2025, thirty thousand dollars, effective January 1, 2035, and forty thousand dollars, effective January 1, 2040. The maximum penalty for a continuing violation or a multiple series of violations of the same standard or rule provision shall increase to two hundred thousand dollars, effective January 1, 2015, two hundred fifty thousand dollars, effective January 1, 2025, three hundred thousand dollars, effective January 1, 2035, and four hundred thousand dollars, effective January 1, 2040. In determining the amount of the penalty, the commission shall consider the nature, circumstances, and gravity of the violation, and also shall consider, with respect to the entity found to have committed the violation:

(1) The degree of culpability;

(2) Any history of prior violations;

(3) The effect of the penalty on the entity's ability to continue operation;

(4) Any good faith effort in attempting to achieve compliance;

(5) Ability to pay the penalty; and

(6) Such other matters as are relevant in the case.

3. Every violation of a specific natural gas safety standard or rule by any corporation, person, public utility, or municipality that owns any gas plant is a separate and distinct offense, regardless of whether such violations relate to the same incident. In case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense.

4. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or employee of any corporation, person, public utility, or municipality that owns any gas plant acting within the scope of official duties of employment shall in every case be considered the act, omission, or failure of such corporation, person, public utility, or municipality that owns any gas plant.

392.200. ADEQUATE SERVICE — JUST AND REASONABLE CHARGES — UNJUST DISCRIMINATION — UNREASONABLE PREFERENCE — REDUCED RATES PERMITTED FOR FEDERAL LIFELINE CONNECTION PLAN — DELIVERY OF TELEPHONE AND TELEGRAPH MESSAGES — CUSTOMER — SPECIFIC PRICING — TERM AGREEMENTS, DISCOUNT RATES. — 1. Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

2. No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions. Promotional programs for telecommunications services may be offered by telecommunications companies for periods of time so long as the offer is otherwise consistent with the provisions of this chapter and approved by the commission. Neither this subsection nor subsection 3 of this section shall be construed

to prohibit an economy rate telephone service offering. This section and section 392.220 to the contrary notwithstanding, the commission is authorized to approve tariffs filed by local exchange telecommunications companies which elect to provide reduced charges for residential telecommunications connection services pursuant to the lifeline connection assistance plan as promulgated by the federal communications commission. Eligible subscribers for such connection services shall be those as defined by participating local exchange telecommunications company tariffs.

3. No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages.

4. (1) No telecommunications company may define a telecommunications service as a different telecommunications service based on the geographic area or other market segmentation within which such telecommunications service is offered or provided, unless the telecommunications company makes application and files a tariff or tariffs which propose relief from this subsection. Any such tariff shall be subject to the provisions of sections 392.220 and 392.230 and in any hearing thereon the burden shall be on the telecommunications company to show, by clear and convincing evidence, that the definition of such service based on the geographic area or other market within which such service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

(2) It is the intent of this act to bring the benefits of competition to all customers and to ensure that incumbent and alternative local exchange telecommunications companies have the opportunity to price and market telecommunications services to all prospective customers in any geographic area in which they compete. To promote the goals of the federal Telecommunications Act of 1996, **for an alternative local exchange telecommunications company or** for an incumbent local exchange telecommunications company in any exchange where an **incumbent local exchange telecommunications company has been classified competitive under sections 392.245 and 392.361, an** alternative local exchange telecommunications company has been certified and is providing basic local telecommunications services or switched exchange access services, or **[**for an alternative local exchange telecommunications company**] an interconnected voice over Internet protocol service provider has been registered and is providing local voice service**, the commission shall review and approve or reject, within forty-five days of filing, tariffs for proposed different services as follows:

(a) For services proposed on an exchangewide basis, it shall be presumed that a tariff which defines and establishes prices for a local exchange telecommunications service or exchange access service as a different telecommunications service in the geographic area, no smaller than an exchange, within which such local exchange telecommunications service or exchange access service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter;

(b) For services proposed in a geographic area smaller than an exchange or other market segmentation within which or to whom such telecommunications service is proposed to be offered, a local exchange telecommunications company may petition the commission to define and establish a local exchange telecommunications service or exchange access service as a different local exchange telecommunications service or exchange access service. The commission shall approve such a proposal unless it finds that such service in a smaller geographic area or such other market segmentation is contrary to the public interest or is contrary to the purposes of this chapter. Upon approval of such a smaller geographic area or such other market segmentation for a different service for one local exchange telecommunications company, all other local exchange telecommunications companies certified

to provide service in that exchange may file a tariff to use such smaller geographic area or such other market segmentation to provide that service;

(c) For proposed different services described in paragraphs (a) and (b) of this subdivision, the local exchange telecommunications company which files a tariff to provide such service shall provide the service to all similarly situated customers, upon request in accordance with that company's approved tariff, in the exchange or geographic area smaller than an exchange or such other market segmentation for which the tariff was filed, and no price proposed for such service by an incumbent local exchange telecommunications company, other than for a competitive service, shall be lower than its long-run incremental cost, as defined in section 386.020, RSMo;

(3) The commission, on its own motion or upon motion of the public counsel, may by order, after notice and hearing, define a telecommunications service offered or provided by a telecommunications company as a different telecommunications service dependent upon the geographic area or other market within which such telecommunications service is offered or provided and apply different service classifications to such service only upon a finding, based on clear and convincing evidence, that such different treatment is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

5. No telecommunications company may charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange telecommunications service provided over the same or equivalent distance between two points without filing a tariff for the offer or provision of such service pursuant to sections 392.220 and 392.230. In any proceeding under sections 392.220 and 392.230 wherein a telecommunications company seeks to charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange service, the burden shall be on the subject telecommunications company to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. The commission may modify or prohibit such charges if the subject telecommunications company fails to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. This subsection shall not apply to reasonable price discounts based on the volume of service provided, so long as such discounts are nondiscriminatory and offered under the same rates, terms, and conditions throughout a telecommunications company's certificated or service area.

6. Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made.

7. The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge.

8. Customer-specific pricing is authorized on an equal basis for incumbent and alternative local exchange companies, and for interexchange telecommunications companies for:

(1) Dedicated, nonswitched, private line and special access services;

(2) Central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services; and

(3) Any business service offered in an exchange in which basic local telecommunications service offered **[**to business customers**]** by the incumbent local exchange telecommunications company has been declared competitive under section 392.245**, and any retail business service offered to an end-user in a noncompetitive exchange**.

9. This act shall not be construed to prohibit the commission, upon determining that it is in the public interest, from altering local exchange boundaries, provided that the incumbent local exchange telecommunications company or companies serving each exchange for which the boundaries are altered provide notice to the commission that the companies approve the alteration of exchange boundaries.

10. Notwithstanding any other provision of this section, every telecommunications company is authorized to offer term agreements of up to five years on any of its telecommunications services.

11. Notwithstanding any other provision of this section, every telecommunications company is authorized to offer discounted rates or special promotions on any of its telecommunications services to any existing, new, and/or former customers.

12. Packages of services may be offered on an equal basis by incumbent and alternative local exchange companies and shall not be subject to regulation under section 392.240 or 392.245, nor shall packages of services be subject to the provisions of subsections 1 through 5 of this section, provided that each telecommunications service included in a package is available apart from the package of services and still subject to regulation under section 392.240 or 392.245. For the purposes of this subsection, a "package of services" includes more than one telecommunications service or one or more telecommunications service combined with one or more nontelecommunications service. **Any tariff to introduce a new package or to make any change to an existing package, except for the elimination of a package, shall be filed, on an informational basis, with the commission at least one day prior to the introduction of such new package or implementation of such change. Any tariff to eliminate an existing package shall be filed, on an informational basis, with the commission at least ten days prior to the elimination of the package.**

392.220. RATES, SCHEDULES, SUSPENSION OF, WHEN — REVOCATION OF CERTIFICATE OF SERVICE, PENALTY. — 1. Every telecommunications company shall print and file with the commission schedules showing the rates, rentals and charges for service of each and every kind by or over its facilities between points in this state and between each point upon its facilities and all points upon all facilities leased or operated by it and between each point upon its facilities or upon any facility leased or operated by it and all points upon the line of any other telecommunications company whenever a through service or joint rate shall have been established between any two points. If no joint rate over through facilities has been established, the several companies joined over such through facilities shall file with the commission the separately established rates and charges applicable where through service is afforded. Such schedule shall plainly state the places between which telecommunications service will be rendered and shall also state separately all charges and all privileges or facilities granted or allowed and any rules or regulations or forms of contract which may in any wise change, affect or determine any or the aggregate of the rates, rentals or charges for the service rendered. Such schedule shall be plainly printed and kept open to public inspection. The commission shall have the power to prescribe the form of every such schedule and may from time to time prescribe, by order, changes in the form thereof. The commission shall also have power to establish rules and regulations for keeping such schedules open to public inspection and may from time to time modify the same. Every telecommunications company shall file with the commission as and when required by it a copy of any contract, agreement or arrangement in writing with any other telecommunications company or with any other corporation, association or person relating in any way to the construction, maintenance or use of telecommunications facilities or service by or rates and charges over or upon any facilities.

2. Unless the commission otherwise orders, and except for the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission other than the rates for exchange access service, no change shall be made in any rate, charge or rental, or joint rate, charge or rental which shall have been filed by a telecommunications company in compliance with the requirements of sections 392.190 to 392.530, except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, charge or rental shall go into effect; and all proposed changes shall be shown by filing new schedules or shall be plainly indicated upon the schedules filed and in force at the time and kept open to public inspection. The commission for good cause shown may allow changes in rates, charges or rentals without requiring the thirty days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its

schedules by such telecommunications company. No telecommunications company shall charge, demand, collect or receive a different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time. No telecommunications company shall refund or remit directly or indirectly any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility other than such privileges and facilities as are contemplated by sections 392.200, 392.245, and 392.455, except such as are specified in its schedule filed and in effect at the time and regularly and uniformly extended to all persons and corporations under like circumstances for a like or substantially similar service.

3. No telecommunications company subject to the provisions of this law shall, directly or indirectly, give any free or reduced service, or any free pass or frank for the provision of telecommunications services between points within this state, except to its officers, employees, agents, surgeons, physicians, attorneys at law and their families; to persons or corporations exclusively engaged in charitable and eleemosynary work and ministers of religions; to officers and employees of other telegraph corporations and telephone corporations, railroad corporations and street railroad corporations; public education institutions, public libraries and not-for-profit health care institutions. This subsection shall not apply to state, municipal or federal contracts.

4. Any proposed rate or charge for any new telecommunications service which has not previously been provided by a telecommunications company to its Missouri customers may be suspended by the commission for a period not to exceed **[**sixty**]** **thirty** days from the proposed effective date of such proposed rate or charge. This subsection shall not be applicable to any new price or method of pricing for a service presently being offered by any telecommunications company to its Missouri customers. Upon proposing a rate or charge for a telecommunications service which has not previously been provided by a telecommunications company to its Missouri customers, the offeror must file with the commission its justification for considering such offering a new service and such other information as may be required by rule or regulation, and must identify that service as being noncompetitive, transitionally competitive or competitive. If the offeror is a noncompetitive or transitionally competitive telecommunications company and it proposes such service as a transitionally competitive or competitive telecommunications service, the telecommunications service shall be treated as a transitionally competitive telecommunications service until such time as the commission finally determines the appropriate classification. If the offeror is a competitive telecommunications company and it proposes such service as a competitive service, the competitive classification proposed by the offeror of the service shall apply until such time as the commission finally determines the appropriate classification. Such final determination by the commission of the appropriate classification of such service may be made by the commission after the end of the maximum **[**sixty-day**]** **thirty-day** suspension period, but any such decision by the commission issued after the maximum **[**sixty-day**]** **thirty-day** suspension period shall be prospective in nature. The commission shall expedite proceedings under this subsection in order to facilitate the rapid introduction of new telecommunications products and services into the marketplace.

5. Unless the commission otherwise orders, any change in rates or charges, or change in any classification or tariff resulting in a change in rates or charges, for any telephone cooperative shall be filed, on an informational basis, with the commission at least thirty days prior to the date for implementation of such change. Nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission, except for exchange access service.

6. If after notice and hearing, the commission determines that a telecommunications company has violated the requirements of section 392.200 or this section, it may revoke the certificate of service authority under which that telecommunications company operates and shall direct its general counsel to initiate an action under section 386.600, RSMo, to recover penalties from such telecommunications company in an amount not to exceed the revenues received as

a result of such violation multiplied by three or the gross jurisdictional operating revenues of that company for the preceding twelve months, the provisions of section 386.570, RSMo, notwithstanding.

392.230. CHARGES FOR SHORT AND LONG DISTANCE SERVICE — POWER OF COMMISSION TO STAY INCREASED RATES — HEARING, REQUIREMENTS, SMALL TELEPHONE COMPANY, REQUIREMENTS. — 1. No telecommunications company subject to the provisions of this chapter shall charge or receive any greater compensation in the aggregate for the transmission of any interexchange telecommunications service offered or provided for a shorter than for a longer distance over the same line or route in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through interexchange telecommunications service than the aggregate of the intermediate rates or tolls subject to the provisions of this chapter; but this shall not be construed as authorizing any such telecommunications company to charge or receive as great a compensation for a shorter as for a longer distance.

2. Upon application to the commission, a telecommunications company may, in special cases, after investigation, be authorized by the commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the commission may from time to time prescribe the extent to which such telecommunications companies may be relieved from the operation and requirements of this section.

3. Whenever there shall be filed with the commission by any telecommunications company, other than a small telephone company, any schedule stating a new individual or joint rate, rental or charge, or any new individual or joint regulation or practice affecting any rate, rental or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested telecommunications company or companies, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, rental, charge, regulation or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the telecommunications company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, rental, charge, regulation or practice, but not for a longer period than **[**one hundred and twenty**]** **sixty** days beyond the time when such rate, rental, charge, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, rental, charge, regulation or practice goes into effect, the commission may make such order in reference to such rate, rental, charge, regulation or practice as would be proper in a proceeding initiated after the rate, rental, charge, regulation or practice had become effective, however, if any such hearing cannot be concluded within the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding **[**six months**]** **ninety days**.

4. For the purposes of this section, a "small telephone company" is defined as a local exchange telecommunications company which serves no more than twenty-five thousand subscriber access lines in the state of Missouri.

5. Whenever a small telephone company seeks to implement any new individual or joint rate, rental or charge, or any individual or joint regulation or practice affecting any rate, rental or charge, it shall file same with the commission and notify its customers of such change at least thirty days in advance of the date on which the new rate, rental, charge, regulation or practice is proposed to become effective. Upon the filing by a small telephone company of any new individual or joint rate, rental or charge, or any new individual or joint regulation or practice affecting any rate, rental or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested small telephone company or companies, but upon reasonable notice, to enter upon a hearing concerning the propriety of such

rate, rental, charge, regulation or practice; and pending such hearing and the decision thereon the commission, upon filing with such schedule and delivering to the small telephone company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, rental, charge, regulation or practice, but not for a longer period than one hundred fifty days beyond the time when such rate, rental, charge, regulation or practice would otherwise go into effect. If the commission fails to issue its decision within the one-hundred-fifty-day suspension period, the investigation shall be closed and the rate, rental, charge, regulation or practice shall be considered approved for all purposes.

6. At any hearing involving a rate increased or a rate sought to be increased after the passage of this law, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the telecommunications company, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

392.245. COMPANIES TO BE REGULATED, WHEN — MAXIMUM PRICES, DETERMINED HOW, CHANGED HOW — CLASSIFICATION — CHANGE OF RATES — NONWIRELESS BASIC LOCAL TELECOMMUNICATIONS SERVICES, EXEMPT FROM MAXIMUM ALLOWABLE PRICES. — 1. The commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation. Any rate, charge, toll, or rental that does not exceed the maximum allowable price under this section shall be deemed to be just, reasonable, and lawful. As used in this chapter, "price cap regulation" shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section.

2. A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service **or an interconnected voice over Internet protocol service provider has been registered to provide service under section 392.550,** and is providing such service in any part of the large incumbent company's service area. A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service **or an interconnected voice over Internet protocol service provider has been registered to provide service under section 392.550,** and is providing such service, or if two or more commercial mobile service providers providing wireless two-way voice communications services are providing services, in any part of the small incumbent company's service area, and the incumbent company shall remain subject to regulation under this section after such election.

3. Except as otherwise provided in this section, the maximum allowable prices established for a company under subsection 1 of this section shall be those in effect on December thirty-first of the year preceding the year in which the company is first subject to regulation under this section. Tariffs authorized under subsection 9 of this section shall be phased in as provided under such tariffs as approved by the commission.

4. (1) Except as otherwise provided in subsections 8 and 9 of this section and section 392.248, the maximum allowable prices for exchange access and basic local telecommunications services of a small, incumbent local exchange telecommunications company regulated under this section shall not be changed for a period of twelve months after the date the company is subject to regulation under this section. Except as otherwise provided in subsections 8 and 9 of this section and section 392.248, the maximum allowable prices for exchange access and basic local telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed prior to January 1, 2000. Thereafter, the

maximum allowable prices for exchange access and basic local telecommunications services of an incumbent local exchange telecommunications company shall be annually changed by **[**one of**]** the following methods:

(a) By the change in the **[**telephone service component of the**]** Consumer Price Index **[**(CPI-TS)**] (CPI)**, as published by the United States Department of Commerce or its successor agency for the preceding twelve months; provided however, that if such a change in the **[**CPI-TS**] (CPI)** for the preceding twelve months is negative, upon request by the company and approval by the commission for good cause shown, the commission may waive any requirement to reduce prices of exchange access and basic local telecommunications service and those existing prices shall remain the maximum allowable prices for purposes of this section until the next annual change. All revenues that are attributable to a **[**CPI-TS**] (CPI)** reduction waiver shall be used for the purposes approved by the commission to benefit local exchange ratepayers in a specific exchange or exchanges, including but not limited to expanded local calling scopes; **[**or**]**

(b) **[**Upon request by the company and approval by the commission, by the change in the Gross Domestic Product Price Index (GDP-PI), as published by the United States Department of Commerce or its successor agency for the preceding twelve months, minus the productivity offset established for telecommunications service by the Federal Communications Commission and adjusted for exogenous factors.**] Notwithstanding the foregoing, upon a finding that a company that is subject to price-cap regulation has telecommunications services in one or more exchanges classified as competitive, the company may increase the maximum allowable rate for basic local telecommunications service in noncompetitive exchanges at a level not to exceed the statewide average for basic local telecommunications service in the competitively classified exchanges of that company, provided that any annual increase in rates for residential basic local telecommunications service shall not exceed two dollars per line per month for a period of four years.**

(2) The commission shall approve a change to a maximum allowable price or make a determination regarding a request for waiver filed pursuant to **[**paragraph (a) of**]** subdivision (1) of this subsection within forty-five days of filing of notice by the local exchange telecommunications company. An incumbent local exchange telecommunications company shall file a tariff to reduce the rates charged for any service in any case in which the current rate exceeds the maximum allowable price established under this subsection.

(3) **[**As a part of its request under paragraph (b) of subdivision (1) of this subsection, a company may seek commission approval to use a different productivity offset in lieu of the productivity offset established by the Federal Communications Commission. An adjustment under paragraph (b) of subdivision (1) of this subsection shall not be implemented if the commission determines, after notice and hearing to be conducted within forty-five days of the filing of the notice of a change to a maximum allowable price, that it is not in the public interest. In making such a determination, the commission shall consider the relationship of the proposed price of service to its cost and the impact of competition on the incumbent local exchange telecommunications company's intrastate revenues from regulated telecommunications services. Any adjustments for exogenous factors shall be allocated to the maximum allowable prices for exchange access and basic local telecommunications service in the same percentage as the revenues for such company bears to such company's total revenues from basic local, nonbasic and exchange access services for the preceding twelve months.

(4) For the purposes of this section, the term "exogenous factor" shall mean a cumulative impact on a local exchange telecommunications company's intrastate regulated revenue requirement of more than three percent, which is attributable to federal, state or local government laws, regulations or policies which change the revenue, expense or investment of the company, and the term "exogenous factor" shall not include the effect of competition on the revenue, expense or investment of the company nor shall the term include any assessment made under section 392.248.

(5)**]** An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of subsections 2 through 5 of section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within **[**thirty**]** **ten** days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section.

5. Each telecommunications service offered to business customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in any exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to business **or residential** customers within the exchange. Each telecommunications service offered to residential customers, other than exchange access service, of an incumbent local exchange telecommunications company regulated under this section shall be classified as competitive in an exchange in which at least two nonaffiliated entities in addition to the incumbent local exchange company are providing basic local telecommunications service to residential customers within the exchange. For purposes of this subsection **and not for purposes of defining the commission's jurisdiction**:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such nonaffiliated provider shall be considered as providing basic local telecommunications service within an exchange**. If the commercial mobile service provider does not designate customers by business or residential class, such provider will be deemed to be providing service to both business and residential customers**;

(2) Any entity providing local voice service in whole or in part over telecommunications facilities or other facilities in which it or one of its affiliates have an ownership interest shall be considered as **[**a**]** **providing** basic local telecommunications service **[**provider**]** regardless of whether such entity is subject to regulation by the commission**, including any interconnected voice over Internet protocol service provider registered under section 392.550**. A provider of local voice service that requires the use of a third party, unaffiliated broadband network or dial-up Internet network for the origination of local voice service shall not be considered a basic local telecommunications service provider. For purposes of this subsection only, a "broadband network" is defined as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction;

(3) Regardless of the technology utilized, local voice service shall mean two-way voice service capable of receiving calls from a provider of basic local telecommunications services as defined by subdivision (4) of section 386.020, RSMo;

(4) Telecommunications companies only offering prepaid telecommunications service or only reselling telecommunications service as defined in subdivision **[**(46)**]** **(54)** of section 386.020, RSMo, in the exchange being considered for competitive classification shall not be considered entities providing basic telecommunications service; **[**and**]**

(5) "Prepaid telecommunications service" shall mean a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(6) Upon request of an incumbent local exchange telecommunications company seeking competitive classification of **[**business service or residential service, or both**]** **its services under this subsection**, the commission shall, within thirty days of the request, determine whether **[**the requisite number of entities are**]** **there are at least two entities** providing basic local telecommunications service **[**to business or residential customers, or both,**]** in an exchange and if so shall approve tariffs designating all such **[**business or residential**]** services other than exchange access service, as competitive within such exchange. Notwithstanding any other provision of this subsection, any incumbent local exchange company may petition the commission for competitive classification within an exchange based on competition from any entity providing local voice service in whole or in part by using its own telecommunications facilities or other facilities or the telecommunications facilities or other facilities of a third party,

including those of the incumbent local exchange company as well as providers that rely on an unaffiliated third-party Internet service. The commission shall approve such petition within sixty days **[**unless it finds that such competitive classification is contrary to the public interest**]**. The commission shall maintain records of **[**regulated**]** **certified and registered** providers of local voice service, including those **[**regulated**]** providers who provide local voice service over their own facilities, or through the use of facilities of another provider of local voice service. In reviewing an incumbent local exchange telephone company's request for competitive status in an exchange, the commission shall consider their own records concerning ownership of facilities and shall make all inquiries as are necessary and appropriate from **[**regulated**]** **certified and registered** providers of local voice service to determine the extent and presence of **[**regulated**]** local voice providers in an exchange. If the services of an incumbent local exchange telecommunications company are classified as competitive under this subsection, the local exchange telecommunications company may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment, upon filing tariffs which shall become effective within the time lines identified in section 392.500. The commission **[**shall**]** **may**, **[**at least**]** **not more than once** every two years**[**, or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive,**]** review those exchanges where an incumbent local exchange carrier's services have been classified as competitive, to determine if the conditions of this subsection for competitive classification continue to exist in the exchange and if the commission determines, after hearing, that such conditions no longer exist for the incumbent local exchange telecommunications company in such exchange, it shall reimpose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the **new** maximum allowable prices **for basic local telecommunications service in such exchange shall be** established by the provisions of **[**subsections**]** **subsection** 4 **[**and 11**]** of this section**[**, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.**] ;**

(7) Upon a finding that fifty-five percent or more of an incumbent local exchange telecommunications company's total subscriber access lines are in exchanges where such company's services have been declared competitive, the incumbent local exchange telecommunications company shall be deemed competitive and shall no longer be subject to price-cap regulation, except that rates charged for basic local telecommunications service in exchanges that were noncompetitive immediately prior to this finding can be increased to a rate that is no higher than the statewide average rate for basic local telecommunications service in the incumbent local exchange company's competitively classified exchanges for a period of four years. During the four year period, any annual increase in rates for residential basic local telecommunications service shall not exceed two dollars per line per month. Rates charged for exchange access service by an incumbent local exchange telecommunications company deemed competitive shall not exceed the rates charged at the time the company was deemed competitive;

(8) An incumbent local exchange telecommunications company deemed competitive under this section and all alternative local exchange telecommunications companies shall not be required to comply with customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels established by the commission, but shall be subject to commission authority to hear and resolve customer complaints to the extent the customer complaint is based on Truth-in-Billing regulations established by the Federal Communications Commission, or network engineering and maintenance standards established within the National Electric Safety Code. In addition, the commission shall continue to have authority

to hear and resolve customer complaints to the extent such complaints are based on a failure to comply with the provisions of applicable tariffs, or a failure to comply with the rules of the commission other than those rules related to customer billing, network engineering and maintenance, and service objectives and surveillance levels or a failure to provide service in a manner that is safe, adequate, usual and customary in the telecommunications industry;

(9) The commission may reimpose its customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels, as applicable, on an incumbent local exchange telecommunications company that has been deemed competitive under this section, only upon a finding that the incumbent local exchange telecommunications company has engaged in a pattern or practice of inadequate service in these subject areas and that the reimposition of such rules is necessary to ensure the protection of consumer rights and/or the public safety. Prior to formal notice and hearing, the commission shall notify the incumbent local exchange telecommunications company of any deficiencies and provide such company an opportunity to remedy such deficiencies in a reasonable amount of time, but not less than sixty days. Should the incumbent local exchange telecommunications company remedy such deficiencies within a reasonable amount of time, the commission shall not reimpose the applicable customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels. Should the incumbent local exchange telecommunications company fail to remedy such deficiencies, the commission shall reimpose the applicable customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels, if it finds that:

(a) The reimposition of such rules is necessary for the protection of the majority of the incumbent local exchange telecommunications company's customers or for the public safety;

(b) No alternative or less burdensome action is adequate to protect the majority of the incumbent local exchange telecommunications company's customers; and

(c) Competitive market forces have been and will continue to be insufficient to protect the majority of the incumbent local exchange telecommunications company's customers;

(10) Should the commission determine that an emergency exists that impacts public safety or is essential for the protection of a majority of customers of all local exchange telecommunications companies operating in this state, the commission may, on an emergency basis, impose its customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels, as applicable, on all local exchange telecommunications companies on a uniform and non-discriminatory basis through the promulgation of emergency rules pursuant to section 536.025, RSMo. The commission shall only promulgate such emergency rules after determining that:

(a) The rules are essential for the protection of a majority of customers of local exchange telecommunications companies operating in this state;

(b) No alternative or less burdensome mechanism will suffice to protect the majority of customers of local exchange telecommunications companies operating in this state; and

(c) Competitive market forces have been and will continue to be insufficient to protect the majority of customers of local exchange telecommunications companies operating in this state.

Notwithstanding the provisions of subsection 7 of section 536.025, RSMo, emergency rules promulgated by the commission pursuant to this subdivision shall remain in effect until the legislature concludes its next regular legislative session following the imposition of any such rules.

6. Nothing in this section shall be interpreted to alter the commission's jurisdiction over quality and conditions of **[**service**]** **noncompetitive telecommunications services** or to relieve **noncompetitive** telecommunications companies from the obligation to comply with commission rules relating to minimum basic local and interexchange telecommunications service.

7. A company regulated under this section shall not be subject to regulation under subsection 1 of section 392.240.

8. An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company **[**is**]** first **[**subject to regulation under this section**]** **exercises its option to rebalance rates under this subsection**. **[**Absent commission action under subsection 10 of this section, an incumbent local exchange telecommunications company regulated under this section shall have four years from the date the company becomes subject to regulation under this section to make the adjustments authorized under this subsection and subsection 9 of this section.**]** Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company **[**is**]** first **[**subject to regulation under this section**]** **exercises its option to rebalance rates under this subsection**.

9. Other provisions of this section to the contrary notwithstanding **[**and no earlier than January 1, 1997**]**, the commission shall allow an incumbent local exchange telecommunications company regulated under this section which reduces its intrastate access service rates pursuant to subsection 8 of this section to offset the **annual** revenue loss resulting from **[**the first year's**]** **its** access service rate reduction by increasing **each year** its monthly maximum allowable prices applicable to basic local exchange telecommunications services by an amount not to exceed one dollar fifty cents. A large incumbent local exchange telecommunications company shall not increase its monthly rates applicable to basic local telecommunications service under this subsection unless it also reduces its rates for intraLATA interexchange telecommunications services by at least ten percent **in the year it first exercises its option to rebalance rates under subsection 8 of this section**. **[**No later than one year after the date the incumbent local exchange telecommunications company becomes subject to regulation under this section, the commission shall complete an investigation of the cost justification for the reduction of intrastate access rates and the increase of maximum allowable prices for basic local telecommunications service. If the commission determines that the company's monthly maximum allowable average statewide prices for basic local telecommunications service after adjustment pursuant to this subsection will be equal to or less than the long-run incremental cost, as defined in section 386.020, RSMo, of providing basic local telecommunications service and that the company's intrastate access rates after adjustment pursuant to this subsection will exceed the long-run incremental cost, as defined in section 386.020, RSMo, of providing intrastate access services, the commission shall allow the company to offset the revenue loss resulting from the remaining three-quarters of the total needed to bring that company's intrastate access rates to one hundred fifty percent of the interstate level by increasing the company's monthly maximum allowable prices applicable to basic local telecommunications service by an amount not to exceed one dollar fifty cents on each of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction of intrastate access rates and the increase of monthly maximum allowable prices for basic local telecommunications services to be terminated at the levels the commission determines to be cost-justified.**]** The total **annual** revenue increase due to the increase to the monthly maximum allowable prices for basic local telecommunications service shall not exceed the total **annual** revenue loss resulting from the reduction to intrastate access service rates.

10. Any telecommunications company whose intrastate access costs are reduced pursuant to subsections 8 and 9 of this section shall decrease its rates for intrastate toll telecommunications service to flow through such reduced costs to its customers. The commission may permit a telecommunications company to defer a rate reduction required by this subdivision until such reductions, on a cumulative basis, reach a level that is practical to flow through to its customers.

11. **[**The maximum allowable prices for nonbasic telecommunications services of a small, incumbent local exchange telecommunications company regulated under this section shall not be changed until twelve months after the date the company is subject to regulation under this section or, on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. The maximum allowable prices for nonbasic telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed until January 1, 1999, or on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. Thereafter, the maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to five percent for each of the following twelve-month periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices. This subsection shall not preclude an incumbent local exchange telecommunications company from proposing new telecommunications services and establishing prices for such new services. An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of subsections 2 through 5 of section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within thirty days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section.**] All nonbasic telecommunications services of an incumbent local exchange telecommunications company that is subject to price-cap regulation shall be exempt from limitations on maximum allowable prices.**

12. The commission shall permit an incumbent local exchange telecommunications company regulated under this section to determine and set its own depreciation rates which shall be used for all intrastate regulatory purposes. Provided, however, that such a determination is not binding on the commission in determining eligibility for or reimbursement under the universal service fund established under section 392.248.

13. Prior to January 1, 2006, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications services as of August 28, 2005. The commission shall likewise determine the weighted, statewide average rate of nonwireless basic local telecommunications services two years and five years after August 28, 2005. The commission shall report its findings to the general assembly by January 30, 2008, and provide a second study by January 30, 2011. If the commission finds that the weighted, statewide average rate of nonwireless basic local telecommunications service in 2008 or 2011 is greater than the weighted, statewide average rate of nonwireless basic local telecommunications service in 2006 multiplied by one plus the percentage increase in the Consumer Price Index for all goods and services for the study periods, the commission shall recommend to the general assembly such changes in state law as the commission deems appropriate to achieve the purposes set forth in section 392.185. In determining the weighted, statewide average rate of nonwireless basic local telecommunications service, the commission shall exclude rate increases to nonwireless basic telecommunications service permitted under subsections 8 and 9 of this section and section 392.240 or exogenous costs incurred by the providers of nonwireless basic local telecommunications service.

392.361. CLASSIFICATION OF TELECOMMUNICATIONS COMPANY, SERVICES — PROCEDURE — EFFECT OF CLASSIFICATION. — 1. **As an alternative to the provisions of section 392.245,** a telecommunications company**, including price-cap regulated companies,** may file with the commission a petition to be classified as a competitive telecommunications company or a transitionally competitive telecommunications company under this section, or to have services classified as competitive or transitionally competitive telecommunications services under this section. **[**The office of public counsel may initiate classification proceedings by petition. The commission may initiate classification proceedings on its own motion. The commission may require all telecommunications companies potentially affected by a classification proceeding to appear as parties for a determination of their interests.**]**

2. The commission **[**or a petitioner**]** shall serve by regular mail a copy of any petition or motion filed under subsection l of this section on all telecommunications companies that have applied for authority to provide or are authorized to provide intrastate telecommunications service within this state. In response to a petition filed **[**or a proceeding instituted upon its own motion**]**, the commission shall afford all interested persons reasonable notice and an opportunity to be heard to determine whether a telecommunications company or service may be subject to sufficient competition to justify a lesser degree of regulation. In making this determination, the commission shall, within nine months of the filing of the petition **[**or initiation of a proceeding**]** under this section, consider all relevant factors and shall issue written findings of fact delineating all factors considered. **[**The commission may, for good cause, extend the time for determination for an additional three months. A second extension period not exceeding three months may, for good cause, be granted by the commission.**]** In any hearing involving the same telecommunications service or company, the commission may, if appropriate and if no new finding of fact is required, rely on a finding of fact made in a prior hearing.

3. The commission may classify a telecommunications company as a competitive telecommunications company **[**only**]** upon a finding that **[**all**] a majority of its** telecommunications services offered by such company are competitive telecommunications services.

4. If, after following the procedures required under subsection 2 of this section, the commission determines that a telecommunications service is subject to sufficient competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest it may, by order, classify:

(1) The subject telecommunications service offered by a telecommunications company as a competitive telecommunications service;

(2) The subject telecommunications service offered by a noncompetitive or transitionally competitive telecommunications company as a transitionally competitive telecommunications service;

(3) The subject telecommunications company, subject to the condition set forth in subsection 3 of this section, as a competitive telecommunications company; or

(4) The subject interexchange telecommunications company as a transitionally competitive telecommunications company.

5. By its order classifying a telecommunications service as competitive or transitionally competitive or a telecommunications company as competitive or transitionally competitive, the commission may, with respect to that service or company and with respect to one or more providers of that service, suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340, except as provided in section 392.390. **[**The commission may suspend different requirements for different telecommunications companies, if such different treatment is reasonable and not detrimental to the public interest.**]**

6. If the commission suspends the application of a statutory requirement under this section, it may require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement. **The**

exchange access rates of an incumbent local exchange company that is declared a competitive telecommunications company shall not exceed the rates that were charged at the time the company became a competitive telecommunications company. The exchange access rates of an alternative local exchange company shall not exceed the exchange access rates of the incumbent local exchange company against whom the alternative local exchange company is competing.

7. **[**If necessary to protect the public interest, the commission may at any time, by order, after hearing upon its own motion or petition filed by the public counsel, a telecommunications company, or any person or persons authorized to file a complaint as to the reasonableness of any rates or charges under section 386.390, RSMo, reimpose or modify the statutory provisions suspended under subsection 5 of this section upon finding that the company or service is no longer competitive or transitionally competitive or that the lesser regulation previously authorized is no longer in the public interest or no longer consistent with the provisions and purposes of this chapter.

8.**]** A telecommunications company may file a petition to have a telecommunications service it then offers classified as competitive or transitionally competitive under this section no more than once every two years, unless exceptional circumstances are demonstrated. A telecommunications company shall consolidate in a single petition all telecommunications services the company then offers which it seeks to classify as competitive or transitionally competitive within two years from the date such petition is filed, unless the commission determines, for good cause shown, that a waiver of this provision should be granted.

8. Notwithstanding the foregoing or the provisions of section 392.245, intrastate operator and directory services, including directory assistance services, shall be deemed competitive on a statewide basis for all local exchange telecommunications companies.

392.370. TRANSITIONALLY COMPETITIVE TELECOMMUNICATIONS SERVICES, CLASSIFIED WHEN. — **[**l.**]** After the effective date of an order of the commission which finds, pursuant to section 392.361, that a telecommunications service is sufficiently competitive to justify a lesser degree of regulation, the same, substitutable, or equivalent service offered by a transitionally competitive or noncompetitive telecommunications company shall be classified as transitionally competitive **[**pursuant to the procedure set out in subsection 2 of section 392.490**]**, if the telecommunications service granted a lesser degree of regulation is authorized to be provided anywhere within the certificated or service area of the transitionally competitive or noncompetitive telecommunications company. Any transitionally competitive telecommunications service offered by a noncompetitive local exchange telecommunications company shall be classified as a competitive telecommunications service no later than three years after the effective date of a tariff for such service bearing the classification "transitionally competitive". Any transitionally competitive service offered by a transitionally competitive interexchange telecommunications company shall be classified as a competitive telecommunications service no later than two years after the effective date of a tariff for such service bearing the classification "transitionally competitive". **The exchange access rates of an incumbent local exchange company that is declared a competitive telecommunications company shall not exceed the rates that were charged at the time the company became a competitive telecommunications company. The exchange access rates of an alternative local exchange company shall not exceed the exchange access rates of the incumbent local exchange company against whom the alternative local exchange company is competing.**

[2. The commission may extend or reinstate a transitionally competitive service classification applicable to any service provided by a noncompetitive local exchange telecommunications company for two periods in addition to the initial three-year period, each additional period not to exceed three years, after notice and hearing, upon the issuance of an order finding that a competitive classification for such service is not in the public interest or not consistent with the purposes and policies of this chapter. The commission may extend or

reinstate a transitionally competitive service classification applicable to any service provided by a transitionally competitive interexchange telecommunications company for two periods in addition to the initial two-year period, each additional period not to exceed two years, after notice and hearing, upon the issuance of an order finding that a competitive classification for such service is not in the public interest or not consistent with the purposes and policies of this chapter. The commission, on its own motion, or public counsel or any telecommunications company, by complaint, may initiate a proceeding in which the commission shall consider whether to extend or reinstate a transitionally competitive service classification under this section. In any proceeding initiated under this subsection by the commission or the public counsel, the burden to prove that such service is a competitive telecommunications service shall be on the noncompetitive or transitionally competitive telecommunications company providing such service. The commission may consolidate different proceedings under this section involving different transitionally competitive telecommunications services for purposes of hearing.

3. The commission may issue an order, effective at or after such time as the commission may no longer extend or reinstate a transitionally competitive service classification, that reclassifies a competitive or transitionally competitive telecommunications service as a noncompetitive telecommunications service if the commission, after notice and hearing upon its own motion or petition filed by the public counsel, a telecommunications company, or any person or persons authorized to file a complaint as to the reasonableness of any rates or charges under section 386.390, RSMo, determines that a competitive classification for such service is not in the public interest or not consistent with the provisions and purposes of this chapter. Should the commission issue an order under this subsection reclassifying a competitive or transitionally competitive telecommunications service as noncompetitive it shall thereafter apply equal regulation, with respect to such service, to all telecommunications companies providing the same equivalent or substitutable telecommunications service.

4. No tariff which proposes a new rate, rental, or charge or new regulation or practice affecting any rate, rental, or charge for a transitionally competitive telecommunications service which is filed by a noncompetitive local exchange telecommunications company, or a noncompetitive or transitionally competitive interexchange telecommunications company, shall be effective unless and until the noncompetitive local exchange telecommunications company, or the noncompetitive or transitionally competitive interexchange telecommunications company, offering or providing, or seeking to offer or provide, such proposed transitionally competitive telecommunications service prepares and files a study of the cost of providing such service. Such study may in the commission's discretion be given proprietary treatment at the request of such company.

5. Except as provided in subsection 6 of this section, the provisions of sections 392.220 and 392.230 shall apply to any tariff filed for the offer or provision of a transitionally competitive telecommunications service.

6. So long as a transitionally competitive interexchange telecommunications company charges the same price per minute or other unit of measure for the same, equivalent, or substitutable interexchange telecommunications service provided over the same or equivalent distance between any two points, the provisions of subsections 4 and 5 of this section shall not apply to such transitionally competitive interexchange telecommunications company for any proposed decrease in rates for a transitionally competitive interexchange telecommunications service. Such proposed decrease shall instead be treated as a competitive service pursuant to section 392.500.

7. A transitionally competitive telecommunications service which becomes a competitive telecommunications service pursuant to this section or section 392.361 shall no longer be subject to the provisions of subsections 4, 5, and 6 of this section and any increase or decrease in rates or charges applicable to such competitive service shall be treated pursuant to section 392.500.**]**

392.420. REGULATIONS, MODIFICATION OF, COMPANY MAY REQUEST BY PETITION, WHEN — WAIVER, WHEN. — The commission is authorized, in connection with the issuance or modification of a certificate of interexchange or local exchange service authority or the modification of a certificate of public convenience and necessity for interexchange or local exchange telecommunications service, to entertain a petition **[**under section 392.361 and in accordance with the procedures set out in section 392.361,**]** to suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340 if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter. **In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. Notwithstanding any other provision of law in this chapter and chapter 386, RSMo, where an alternative local exchange telecommunications company is authorized to provide local exchange telecommunications services in an incumbent local exchange telecommunications company's authorized service area, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected. In addition, where an interconnected voice over Internet protocol service provider is registered to provide service in an incumbent local exchange telecommunications company's authorized service area under section 392.550, the incumbent local exchange telecommunications company may opt into all or some of the above-listed statutory and commission rule waivers by filing a notice of election with the commission that specifies which waivers are elected. The commission may reimpose its quality of service and billing standards rules, as applicable, on an incumbent local exchange telecommunications company but not on a company granted competitive status under subdivision (7) of subsection 5 of section 392.245 in an exchange where there is no alternative local exchange telecommunications company or interconnected voice over Internet protocol service provider that is certificated or registered to provide local voice service only upon a finding, following formal notice and hearing, that the incumbent local exchange telecommunications company has engaged in a pattern or practice of inadequate service. Prior to formal notice and hearing, the commission shall notify the incumbent local exchange telecommunications company of any deficiencies and provide such company an opportunity to remedy such deficiencies in a reasonable amount of time, but not less than sixty days. Should the incumbent local exchange telecommunications company remedy such deficiencies within a reasonable amount of time, the commission shall not reimpose its quality of service or billing standards on such company.**

392.450. REQUIREMENTS, APPROVAL OF CERTIFICATES — COMMISSION TO ADOPT RULES — MODIFICATION, WHEN — FEDERAL LAW NOT PREEMPTED. — 1. The commission shall approve an application for a certificate of local exchange service authority to provide basic local telecommunications service or for the resale of basic local telecommunications service only upon a showing by the applicant, and a finding by the commission, after notice and hearing that the applicant has complied with the certification process established pursuant to section 392.455.

2. In addition, the commission shall adopt such rules, consistent with section 253(b) of the federal Telecommunications Act of 1996 to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Such rules, at a minimum, shall require that all applicants seeking a certificate to provide basic local telecommunications services under this section:

(1) File and maintain tariffs with the commission in the same manner and form as the commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete; and

(2) Meet the minimum service standards**[**, including quality of service and billing standards,**]** as the commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete.

3. An alternative local exchange telecommunications company which possesses a certificate of service authority to provide basic local telecommunications service as of August 28, 2008, in some but not all exchanges of the state may request the commission to modify its existing certificate to include some or all of the remaining exchanges in the state. The commission shall grant such request within thirty days of its filing as long as the alternative local exchange telecommunications company is in good standing, in all respects, with all applicable commission rules and requirements.

4. Nothing in this chapter or in chapter 386, RSMo, is intended to alter the rights and obligations arising under federal law, including the interconnection and unbundling provisions of 47 U.S.C. Sections 251 and 252, irrespective of the type of technology being used by the requesting local exchange telecommunications company and whether the local exchange telecommunications company is providing telecommunications service or interconnected voice over Internet protocol service, as those terms are defined in chapter 386, RSMo, and the jurisdiction and authority of the commission to mediate and arbitrate disputes arising under said federal law provisions shall remain unaffected.

392.451. STATE ADOPTS FEDERAL EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES. — **[**1. Notwithstanding any provisions of this act to the contrary, and consistent with section 253(f) of the federal Telecommunications Act of 1996, the commission shall approve an application for a certificate of local exchange service authority to provide basic local telecommunications service or for the resale of basic local telecommunications service in an area that is served by a small incumbent local exchange telecommunications company only upon a showing by the applicant, and a finding by the commission, after notice and hearing, that:

(1) The applicant shall, throughout the service area of the incumbent local exchange telecommunication company, offer all telecommunications services which the commission has determined are essential for purposes of qualifying for state universal service fund support; and

(2) The applicant shall advertise the availability of such essential services and the charges therefor using media of general distribution.

2. In addition, the commission shall adopt such rules, consistent with section 253(b) of the federal Telecommunications Act of 1996 to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Such rules, at a minimum, shall require that all applicants seeking a certificate to provide basic local telecommunications services under this section:

(1) File and maintain tariffs with the commission in the same manner and form as the commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete;

(2) Meet the minimum service standards, including quality of service and billing standards, as the commission requires of the incumbent local exchange telecommunications company with which the applicant seeks to compete;

(3) Make such reports to and other information filings with the commission as is required of the incumbent local exchange telecommunications company with which the applicant seeks to compete; and

(4) Comply with all of the same rules and regulations as the commission may impose on the incumbent local exchange telecommunications company with which the applicant seeks to compete.

3.**]** The state of Missouri hereby adopts and incorporates in total the provisions of section 251(f)(1) of the federal Telecommunications Act of 1996 providing exemption for certain rural telephone companies.

392.480. SERVICES TO BE OFFERED UNDER TARIFF. — **[**1.**]** Except as provided in section 392.520, all telecommunications services offered or provided by telecommunications companies shall be offered under tariff and classified as either competitive, transitionally competitive, or noncompetitive telecommunications services, subject to proper certification and other applicable provisions of this chapter. Any tariff filed with the commission shall indicate whether the telecommunications service to be offered or provided is competitive, transitionally competitive, or noncompetitive.

[2. Subject to the provisions of subsection 4 of section 392.220, an offering or the provision of a telecommunications service shall be classified as competitive only if, and only to the extent that, the commission has issued an order to that effect pursuant to section 392.361 or pursuant to its findings issued in an order granting or modifying a certificate of authority or certificate of public convenience and necessity pursuant to section 392.410 or if, and only to the extent that, a transitionally competitive telecommunications service has become a competitive telecommunications service pursuant to section 392.370. Subject to the provisions of subsection 4 of section 392.220, an offering or the provision of a telecommunications service shall be classified as transitionally competitive only if, and only to the extent that, the commission has issued an order to that effect pursuant to section 392.361 or pursuant to its findings issued in an order granting or modifying a certificate of authority or certificate of public convenience and necessity pursuant to section 392.410 or if, and only to the extent that, a telecommunications service has become a transitionally competitive telecommunications service pursuant to subsection 1 of section 392.370 and subsection 2 of section 392.490. All telecommunications services not properly classified as competitive or transitionally competitive shall be classified as noncompetitive telecommunications service.**]**

392.510. TARIFFS, BANDS AND RANGES ALLOWED, WHEN, REQUIREMENTS. — 1. Telecommunications companies may file proposed tariffs for any competitive or transitionally competitive telecommunications service, which includes and specifically describes a range, or band, setting forth a maximum and minimum rate within which range a change in rates or charges for such telecommunications service could be made without prior notice or prior commission approval.

2. The commission may approve such a proposed tariff for a transitionally competitive service only if a noncompetitive or transitionally competitive telecommunications company demonstrates, and the commission finds, that any and all rates or charges within the band or range, are consistent with the public interest and the provisions and purposes of this chapter. To the extent any proposed band or range encompasses rates or charges which are not consistent with the public interest and the provisions and purposes of this chapter, the commission shall have the power, upon notice and after hearing, to modify the level, scope or limits of such band or range, as necessary, to ensure that rates or charges resulting therefrom are consistent with the public interest and the provisions and purposes of this chapter.

3. The provisions of sections 392.220, 392.230, **[**subsections 4 and 5 of section 392.370,**]** and **[**section**]** 392.500 shall not apply to any rate increase or decrease within the band or range authorized pursuant to this section. A telecommunications company shall file written notice of the rate change and its effective date with the commission within ten days after the effective date of any increase or decrease authorized pursuant to this section.

4. Any tariffs that have been approved by the commission prior to September 28, 1987, which establish a range or band of rates within which range or band of rates a change in rates or charges for such telecommunications service could be made without prior notice or prior commission approval shall be deemed approved by the commission. The provisions of sections

392.220, 392.230, [subsections 4 and 5 of section 392.370,] and [section] 392.500 shall not apply to any rate increase or decrease within such band or range.

392.520. PRIVATE SHARED TENANT SERVICES, COIN OPERATED TELEPHONE SERVICES, REGULATION OF. — 1. The commission shall have jurisdiction over the provision of private shared tenant services and customer owned coin telephone telecommunications services, but shall subject such services to the minimum regulation permitted by this chapter for competitive telecommunications services. The commission shall exempt the provision of private shared and customer owned coin telephone telecommunications services from the tariff filing requirements of sections 392.220, 392.230, [subsections 4 and 5 of section 392.370,] and [section] 392.500 and may exempt the provision of such telecommunications services from the provisions of subdivisions (1) and (3) of section 392.390 and from the provisions of section 386.370, RSMo.

2. The commission shall establish the rates or charges and terms of connection for access by such services to the local exchange network. In so doing, the commission shall consider the network integrity of the principal provider of local exchange service and the impact of private shared tenant services on the cost to provide, and rates or charges, for local exchange service. If the commission finds, upon notice and investigation, that tenants in private shared tenant services locations have no alternative access to a local exchange telecommunications company providing basic local telecommunications service, it may require the private shared tenant services provider to make alternative facilities available on reasonable terms and conditions at reasonable prices.

392.550. INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICE, REGISTRATION REQUIRED — CHARGES TO APPLY — PROCEDURE FOR REGISTRATION — AUTHORITY OF COMMISSION. — 1. No person, corporation, or other entity shall offer or provide interconnected voice over Internet protocol service as defined in section 386.020, RSMo, without first having obtained a registration from the commission allowing it to do so. Upon application, the commission shall grant a registration to any person, corporation, or other entity to provide interconnected voice over Internet protocol service, subject to the provisions of this section.

2. Interconnected voice over Internet protocol service shall be subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges. Until January 1, 2010, this subsection shall not alter intercarrier compensation provisions specifically addressing interconnected voice over Internet protocol service contained in an interconnection agreement approved by the commission pursuant to 47 U.S.C. Section 252 and in existence as of August 28, 2008.

3. The commission shall grant a registration, without a hearing and no later than thirty days following the filing of an application accompanied by an affidavit signed by an officer or general partner of the applicant stating the following:

(1) The location of the principal place of business and the names of the principal executive officers of the applicant;

(2) Each exchange, in whole or in part, of a local exchange company in which the applicant proposes to provide interconnected voice over Internet protocol service;

(3) That the applicant is legally, financially, and technically qualified to provide interconnected voice over Internet protocol services;

(4) That the applicant is ready, willing, able, and will comply with all applicable state and federal laws and regulations imposed upon providers of interconnected voice over Internet protocol services;

(5) That the applicant will charge and collect from its end-user customers on interconnected voice over Internet protocol service, and remit to the appropriate authority, fees and surcharges in the same manner as are charged and collected upon end

user customers of local exchange telecommunications service and remitted by local exchange telecommunications companies, including but not necessarily limited to:

(a) Telecommunications programs under section 209.255, RSMo;

(b) Missouri universal service fund under section 392.248;

(c) Local enhanced 911;

(d) Any applicable license tax;

(6) That the applicant will remit the annual assessment imposed by the commission under section 386.370, RSMo;

(7) That the applicant will file, either directly or indirectly through an affiliated competitive local exchange carrier, with the commission an annual report at a time and covering the yearly period fixed by the commission. Verification shall be made by the official holding office at the time of the filing of such report, and if not made upon the knowledge of the person verifying, the same shall set forth in general terms the sources of his or her information and the grounds for his or her belief as to any matters not stated to be verified on his or her knowledge. Such annual report shall be verified by the oath of the president, treasurer, general manager, or receiver, if any, of any of such companies, or by the person required to file the same. The commission shall prescribe the form of such reports and the character of the information to be contained therein; provided, however, that such form and character of the information to be provided shall be limited to:

(a) Information necessary to enable the commission to determine the assessment of the fees and surcharges set forth in subdivisions (5) and (6) of this subsection;

(b) A list of all Missouri exchanges, in whole or in part, in which customers are served; and

(c) The number of customers or lines served in each exchange. The commission shall maintain such information as proprietary and not available to the public; and

(8) That the applicant has established a process for handling inquiries from customers concerning billing issues, service issues, and other consumer-related complaints.

4. Notwithstanding any other provision of law to the contrary, the public service commission shall have the following authority with respect to providers of interconnected voice over Internet protocol service and their provision of such service:

(1) To assess and collect fees to support telecommunications programs under section 209.255, RSMo;

(2) To assess and collect fees to support the Missouri universal service fund under section 392.248;

(3) To assess and collect fees to support the operations of the commission under section 386.370, RSMo;

(4) To assess and collect fees and surcharges under subdivisions (5) and (6) of subsection 3 of this section;

(5) To hear and resolve complaints under sections 386.390 and 386.400, RSMo, regarding the payment or nonpayment for exchange access services regardless of whether a user of exchange access service has been certificated or registered by the commission and regardless of whether the commission otherwise has authority over such user. This subdivision shall not grant the commission authority to review rates for exchange access services that are set under section 392.245; and

(6) To revoke or suspend the registration of any provider of interconnected voice over Internet protocol service who fails to comply with the requirements of this section.

[319.036. EXCEPTION TO EXCAVATION NOTIFICATION REQUIREMENTS FOR AGRICULTURAL PROPERTY, WHEN. — Any person owning or leasing agricultural property shall not be required to make notice of excavation required by section 319.022 for excavations on such property, if such excavation is not in the proximity of an underground facility which is

marked with an aboveground placard or line marker and is not in the proximity of a utility easement known to that person. For purposes of this section "agricultural property" means any property used to produce an agricultural product as defined by section 348.400, RSMo, or defined as agricultural property by that section.]

[392.490. TARIFF, FILING PROCEDURES. — 1. Except as provided in subsection 2 of this section and in subsection 4 of section 392.220, any telecommunications company which seeks to file a tariff classifying a telecommunications service as competitive or transitionally competitive shall apply to the commission consistent with section 392.361, prior to offering or providing such service as competitive or transitionally competitive, for an order finding that the proposed tariff is proper and consistent with the law. The commission or the telecommunications company applying for commission approval pursuant to this subsection shall provide notice of its application and proposed tariff as provided in section 392.361, and the commission shall afford all interested persons reasonable notice and an opportunity to be heard. No such tariff shall become effective until after the commission issues an order consistent with section 392.361.

2. A noncompetitive or transitionally competitive telecommunications company which seeks to file a tariff classifying a telecommunications service as transitionally competitive by operation of subsection 1 of section 392.370, shall apply to the commission for an order finding that the transitionally competitive classification is consistent with subsection 1 of section 392.370. If such tariff does not otherwise propose a new rate, rental or charge or new regulation or practice affecting any rate, rental or charge, the transitionally competitive classification shall become effective ninety days after filing with the commission and notice to public counsel and all telecommunications companies unless the commission issues an order prior to the effective date of such tariff, after notice and hearing, upon its own motion or upon complaint by the public counsel or a telecommunications company, which finds that the transitionally competitive classification is not consistent with subsection 1 of section 392.370.]

[392.515. INTERSTATE OPERATOR SERVICES, RATES, COMMISSION TO DETERMINE, HOW — TRAFFIC AGGREGATOR NOT TO DENY USER ACCESS TO COMPANY OF CHOICE. — Notwithstanding the provisions of sections 392.361, 392.370, 392.380, 392.400, 392.480, 392.490, 392.500, 392.510 and 392.520 to the contrary:

(1) Intrastate operator services provided by alternative operator service companies shall be provided pursuant to rates approved by the commission under the provisions of subsection 2 of section 392.220, provided that proposed rates shall be presumed reasonable by the commission and approved if they are no higher than operator services rates of certificated interexchange telecommunications companies which are not alternative operator services companies;

(2) The commission shall promulgate rules as are supported by evidence as to reasonableness to protect users of intrastate operator services provided by interexchange telecommunications companies at traffic aggregator locations from unjust and unreasonable rates, charges, and practices; and to ensure that such users have the opportunity to make informed choices between and among providers of operator services. All such proposed rules shall be filed with the secretary of state and published in the Missouri Register as provided in chapter 536, RSMo, and a hearing shall be held at which affected parties may present evidence as to the reasonableness of any proposed rule. The provisions of subdivision (6) of section 386.250, RSMo, shall apply to rules promulgated under the authority of this section;

(3) Notwithstanding the provisions of paragraph (d) of subdivision (44) of section 386.020, RSMo, to the contrary, no traffic aggregator shall deny a user of intrastate operator services access to that user's interexchange telecommunications company of choice unless the commission, after hearing, orders otherwise for good cause shown.]

SECTION B. EFFECTIVE DATE. — The repeal and reenactment of sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.030, 319.037, 319.041, 319.045, and 319.050, the

enactment of sections 319.027, 319.029, and 319.042, and the repeal of section 319.036 of this act shall become effective on January 1, 2009.

Approved July 10, 2008

HB 1784 [HB 1784]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Requires any American or Missouri flag flown on state property to be manufactured in the United States

AN ACT to amend chapter 8, RSMo, by adding thereto one new section relating to flags flown over state buildings.

SECTION
A. Enacting clause.
8.922. United States and state flags flown on state property, manufacturer in United States required.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 8, RSMo, is amended by adding thereto one new section, to be known as section 8.922, to read as follows:

8.922. UNITED STATES AND STATE FLAGS FLOWN ON STATE PROPERTY, MANUFACTURER IN UNITED STATES REQUIRED. — Any Missouri or American flag flown on state property located in Missouri shall be manufactured in the United States of America.

Approved June 19, 2008

HB 1790 [SS HCS HB 1790]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding municipal health care facilities and hospital designations

AN ACT to repeal sections 96.160, 190.100, 190.176, 190.200, 190.241, 190.243, and 190.245, RSMo, and to enact in lieu thereof seven new sections relating to the time critical diagnosis system.

SECTION
A. Enacting clause.
96.160. Board of trustees — appointment.
190.100. Definitions.
190.176. Data collection system.
190.200. Public information and education.
190.241. Trauma, STEMI, or stroke centers, designation by department — on-site reviews — grounds for suspension or revocation of designation — fees — administrative hearing commission to hear persons aggrieved by designation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 96.160, 190.100, 190.176, 190.200, 190.241, 190.243, and 190.245, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 96.160, 190.100, 190.176, 190.200, 190.241, 190.243, and 190.245, to read as follows:

96.160. BOARD OF TRUSTEES — APPOINTMENT. — 1. Each facility established or operated and maintained under the provisions of sections 96.150 to 96.228 shall be governed by a board of trustees who shall serve without compensation. Each such board of trustees shall consist of five trustees, who shall be citizens of the city, unless the council shall provide by ordinance for a larger board of not more than fifteen trustees. Trustees shall be appointed by the mayor with the approval of the council and shall be chosen with reference to their fitness for such position; provided no member of the city council and no member of the immediate family of a member of the city council shall be a member of the board.

2. An ordinance providing for a larger board of trustees **[**shall require that three-fifths of such trustees shall be citizens of the city and**]** may provide that **some or all of** the **[**remaining**]** trustees need not be citizens of the city, but shall be citizens of the state of Missouri.

3. Any city establishing or maintaining and operating more than one health care facility may provide by ordinance that one board of trustees shall manage and operate two or more health care facilities.

190.100. DEFINITIONS. — As used in sections 190.001 to 190.245, the following words and terms mean:

(1) "Advanced life support (ALS)", an advanced level of care as provided to the adult and pediatric patient such as defined by national curricula, and any modifications to that curricula specified in rules adopted by the department pursuant to sections 190.001 to 190.245;

(2) "Ambulance", any privately or publicly owned vehicle or craft that is specially designed, constructed or modified, staffed or equipped for, and is intended or used, maintained or operated for the transportation of persons who are sick, injured, wounded or otherwise incapacitated or helpless, or who require the presence of medical equipment being used on such individuals, but the term does not include any motor vehicle specially designed, constructed or converted for the regular transportation of persons who are disabled, handicapped, normally using a wheelchair, or otherwise not acutely ill, or emergency vehicles used within airports;

(3) "Ambulance service", a person or entity that provides emergency or nonemergency ambulance transportation and services, or both, in compliance with sections 190.001 to 190.245, and the rules promulgated by the department pursuant to sections 190.001 to 190.245;

(4) "Ambulance service area", a specific geographic area in which an ambulance service has been authorized to operate;

(5) "Basic life support (BLS)", a basic level of care, as provided to the adult and pediatric patient as defined by national curricula, and any modifications to that curricula specified in rules adopted by the department pursuant to sections 190.001 to 190.245;

(6) "Council", the state advisory council on emergency medical services;

(7) "Department", the department of health and senior services, state of Missouri;

(8) "Director", the director of the department of health and senior services or the director's duly authorized representative;

(9) "Dispatch agency", any person or organization that receives requests for emergency medical services from the public, by telephone or other means, and is responsible for dispatching emergency medical services;

(10) "Emergency", the sudden and, at the time, unexpected onset of a health condition that manifests itself by symptoms of sufficient severity that would lead a prudent layperson, possessing an average knowledge of health and medicine, to believe that the absence of immediate medical care could result in:

(a) Placing the person's health, or with respect to a pregnant woman, the health of the woman or her unborn child, in significant jeopardy;

(b) Serious impairment to a bodily function;

(c) Serious dysfunction of any bodily organ or part;

(d) Inadequately controlled pain;

(11) "Emergency medical dispatcher", a person who receives emergency calls from the public and has successfully completed an emergency medical dispatcher course, meeting or exceeding the national curriculum of the United States Department of Transportation and any modifications to such curricula specified by the department through rules adopted pursuant to sections 190.001 to 190.245;

(12) "Emergency medical response agency", any person that regularly provides a level of care that includes first response, basic life support or advanced life support, exclusive of patient transportation;

(13) "Emergency medical services for children (EMS-C) system", the arrangement of personnel, facilities and equipment for effective and coordinated delivery of pediatric emergency medical services required in prevention and management of incidents which occur as a result of a medical emergency or of an injury event, natural disaster or similar situation;

(14) "Emergency medical services (EMS) system", the arrangement of personnel, facilities and equipment for the effective and coordinated delivery of emergency medical services required in prevention and management of incidents occurring as a result of an illness, injury, natural disaster or similar situation;

(15) "Emergency medical technician", a person licensed in emergency medical care in accordance with standards prescribed by sections 190.001 to 190.245, and by rules adopted by the department pursuant to sections 190.001 to 190.245;

(16) "Emergency medical technician-basic" or "EMT-B", a person who has successfully completed a course of instruction in basic life support as prescribed by the department and is licensed by the department in accordance with standards prescribed by sections 190.001 to 190.245 and rules adopted by the department pursuant to sections 190.001 to 190.245;

(17) "Emergency medical technician-intermediate" or "EMT-I", a person who has successfully completed a course of instruction in certain aspects of advanced life support care as prescribed by the department and is licensed by the department in accordance with sections 190.001 to 190.245 and rules and regulations adopted by the department pursuant to sections 190.001 to 190.245;

(18) "Emergency medical technician-paramedic" or "EMT-P", a person who has successfully completed a course of instruction in advanced life support care as prescribed by the department and is licensed by the department in accordance with sections 190.001 to 190.245 and rules adopted by the department pursuant to sections 190.001 to 190.245;

(19) "Emergency services", health care items and services furnished or required to screen and stabilize an emergency which may include, but shall not be limited to, health care services that are provided in a licensed hospital's emergency facility by an appropriate provider or by an ambulance service or emergency medical response agency;

(20) "First responder", a person who has successfully completed an emergency first response course meeting or exceeding the national curriculum of the United States Department of Transportation and any modifications to such curricula specified by the department through rules adopted pursuant to sections 190.001 to 190.245 and who provides emergency medical care through employment by or in association with an emergency medical response agency;

(21) "Health care facility", a hospital, nursing home, physician's office or other fixed location at which medical and health care services are performed;

(22) "Hospital", an establishment as defined in the hospital licensing law, subsection 2 of section 197.020, RSMo, or a hospital operated by the state;

(23) "Medical control", supervision provided by or under the direction of physicians to providers by written or verbal communications;

(24) "Medical direction", medical guidance and supervision provided by a physician to an emergency services provider or emergency medical services system;

(25) "Medical director", a physician licensed pursuant to chapter 334, RSMo, designated by the ambulance service or emergency medical response agency and who meets criteria specified by the department by rules pursuant to sections 190.001 to 190.245;

(26) "Memorandum of understanding", an agreement between an emergency medical response agency or dispatch agency and an ambulance service or services within whose territory the agency operates, in order to coordinate emergency medical services;

(27) "Patient", an individual who is sick, injured, wounded, diseased, or otherwise incapacitated or helpless, or dead, excluding deceased individuals being transported from or between private or public institutions, homes or cemeteries, and individuals declared dead prior to the time an ambulance is called for assistance;

(28) "Person", as used in these definitions and elsewhere in sections 190.001 to 190.245, any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, estate, public trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy, or any other service user or provider;

(29) "Physician", a person licensed as a physician pursuant to chapter 334, RSMo;

(30) "Political subdivision", any municipality, city, county, city not within a county, ambulance district or fire protection district located in this state which provides or has authority to provide ambulance service;

(31) "Professional organization", any organized group or association with an ongoing interest regarding emergency medical services. Such groups and associations could include those representing volunteers, labor, management, firefighters, EMT-B's, nurses, EMT-P's, physicians, communications specialists and instructors. Organizations could also represent the interests of ground ambulance services, air ambulance services, fire service organizations, law enforcement, hospitals, trauma centers, communication centers, pediatric services, labor unions and poison control services;

(32) "Proof of financial responsibility", proof of ability to respond to damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance or use of a motor vehicle in the financial amount set in rules promulgated by the department, but in no event less than the statutory minimum required for motor vehicles. Proof of financial responsibility shall be used as proof of self-insurance;

(33) "Protocol", a predetermined, written medical care guideline, which may include standing orders;

(34) "Regional EMS advisory committee", a committee formed within an emergency medical services (EMS) region to advise ambulance services, the state advisory council on EMS and the department;

(35) "Specialty care transportation", the transportation of a patient requiring the services of an emergency medical technician-paramedic who has received additional training beyond the training prescribed by the department. Specialty care transportation services shall be defined in writing in the appropriate local protocols for ground and air ambulance services and approved by the local physician medical director. The protocols shall be maintained by the local ambulance service and shall define the additional training required of the emergency medical technician-paramedic;

(36) "Stabilize", with respect to an emergency, the provision of such medical treatment as may be necessary to attempt to assure within reasonable medical probability that no material

deterioration of an individual's medical condition is likely to result from or occur during ambulance transportation unless the likely benefits of such transportation outweigh the risks;

(37) "State advisory council on emergency medical services", a committee formed to advise the department on policy affecting emergency medical service throughout the state;

(38) "State EMS medical directors advisory committee", a subcommittee of the state advisory council on emergency medical services formed to advise the state advisory council on emergency medical services and the department on medical issues;

(39) "STEMI" or "ST-elevation myocardial infarction", a type of heart attack in which impaired blood flow to the patient's heart muscle is evidenced by ST-segment elevation in electrocardiogram analysis, and as further defined in rules promulgated by the department under sections 190.001 to 190.250;

(40) "STEMI center", a hospital that is currently designated as such by the department to care for patients with ST-segment elevation myocardial infarctions;

(41) "STEMI care", includes education and prevention, emergency transport, triage, and acute care and rehabilitative services for STEMI that requires immediate medical or surgical intervention or treatment;

(42) "Stroke", a condition of impaired blood flow to a patient's brain as defined by the department;

(43) "Stroke care", includes emergency transport, triage, and acute intervention and other acute care services for stroke that potentially require immediate medical or surgical intervention or treatment, and may include education, primary prevention, acute intervention, acute and subacute management, prevention of complications, secondary stroke prevention, and rehabilitative services;

(44) "Stroke center", a hospital that is currently designated as such by the department;

[(39)**] (45)** "Trauma", an injury to human tissues and organs resulting from the transfer of energy from the environment;

[(40)**] (46)** "Trauma care" includes injury prevention, triage, acute care and rehabilitative services for major single system or multisystem injuries that potentially require immediate medical or surgical intervention or treatment;

[(41)**] (47)** "Trauma center", a hospital that is currently designated as such by the department.

190.176. DATA COLLECTION SYSTEM. — 1. The department shall develop and administer a uniform data collection system on all ambulance runs and injured patients, pursuant to rules promulgated by the department for the purpose of injury etiology, patient care outcome, injury **and disease** prevention and research purposes. The department shall not require disclosure by hospitals of data elements pursuant to this section unless those data elements are required by a federal agency or were submitted to the department as of January 1, 1998, pursuant to:

(1) Departmental regulation of trauma centers; or

(2) The Missouri head and spinal cord injury registry established by sections 192.735 to 192.745, RSMo; or

(3) Abstracts of inpatient hospital data; or

(4) If such data elements are requested by a lawful subpoena or subpoena duces tecum.

2. All information and documents in any civil action, otherwise discoverable, may be obtained from any person or entity providing information pursuant to the provisions of sections 190.001 to 190.245.

190.200. PUBLIC INFORMATION AND EDUCATION. — 1. The department of health and senior services in cooperation with local and regional EMS systems and agencies may provide public and professional information and education programs related to emergency medical services systems including trauma**, STEMI, and stroke** systems and emergency medical care

and treatment. The department of health and senior services may also provide public information and education programs for informing residents of and visitors to the state of the availability and proper use of emergency medical services, of the value and nature of programs to involve citizens in the administering of prehospital emergency care, including cardiopulmonary resuscitation, and of the availability of training programs in emergency care for members of the general public.

2. The department shall, for STEMI care and stroke care respectively:

(1) Compile and assess peer-reviewed and evidence-based clinical research and guidelines that provide or support recommended treatment standards;

(2) Assess the capacity of the emergency medical services system and hospitals to deliver recommended treatments in a timely fashion;

(3) Use the research, guidelines, and assessment to promulgate rules establishing protocols for transporting STEMI patients to a STEMI center or stroke patients to a stroke center. Such transport protocols shall direct patients to STEMI centers and stroke centers under section 190.243 based on the centers' capacities to deliver recommended acute care treatments within time limits suggested by clinical research;

(4) Define regions within the state for purposes of coordinating the delivery of STEMI care and stroke care, respectively;

(5) Promote the development of regional or community-based plans for transporting STEMI or stroke patients via ground or air ambulance to STEMI centers or stroke centers, respectively, in accordance with section 190.243; and

(6) Establish procedures for the submission of community-based or regional plans for department approval.

3. A community-based or regional plan shall be submitted to the department for approval. Such plan shall be based on the clinical research and guidelines and assessment of capacity described in subsection 1 of this section and shall include a mechanism for evaluating its effect on medical outcomes. Upon approval of a plan, the department shall waive the requirements of rules promulgated under sections 190.100 to 190.245 that are inconsistent with the community-based or regional plan. A community-based or regional plan shall be developed by or in consultation with the representatives of hospitals, physicians, and emergency medical services providers in the community or region.

190.241. TRAUMA, STEMI, OR STROKE CENTERS, DESIGNATION BY DEPARTMENT — ON-SITE REVIEWS — GROUNDS FOR SUSPENSION OR REVOCATION OF DESIGNATION — FEES — ADMINISTRATIVE HEARING COMMISSION TO HEAR PERSONS AGGRIEVED BY DESIGNATION. — 1. The department shall designate a hospital as an adult, pediatric or adult and pediatric trauma center when a hospital, upon proper application submitted by the hospital and site review, has been found by the department to meet the applicable level of trauma center criteria for designation in accordance with rules adopted by the department **as prescribed by section 190.185**.

2. **The department shall designate a hospital as a STEMI or stroke center when such hospital, upon proper application and site review, has been found by the department to meet the applicable level of STEMI or stroke center criteria for designation in accordance with rules adopted by the department as prescribed by section 190.185. In developing STEMI center and stroke center designation criteria, the department shall use, as it deems practicable, appropriate peer-reviewed or evidence-based research on such topics including, but not limited to, the most recent guidelines of the American College of Cardiology and American Heart Association for STEMI centers, or the Joint Commission's Primary Stroke Center Certification program criteria for stroke centers, or Primary and Comprehensive Stroke Center Recommendations as published by the American Stroke Association.**

3. The department of health and senior services shall, not less than once every five years, conduct an on-site review of every trauma**, STEMI, and stroke** center through appropriate department personnel or a qualified contractor. **On-site reviews shall be coordinated for the different types of centers to the extent practicable with hospital licensure inspections conducted under chapter 197, RSMo.** No person shall be a qualified contractor for purposes of this subsection who has a substantial conflict of interest in the operation of any trauma**, STEMI, or stroke** center under review. The department may deny, place on probation, suspend or revoke **[**a trauma center**]** **such** designation in any case in which it has reasonable cause to believe that there has been a substantial failure to comply with the provisions of this chapter or any rules or regulations promulgated pursuant to this chapter. If the department of health and senior services has reasonable cause to believe that a hospital is not in compliance with such provisions or regulations, it may conduct additional announced or unannounced site reviews of the hospital to verify compliance. If a trauma**, STEMI, or stroke** center fails two consecutive on-site reviews because of substantial noncompliance with standards prescribed by sections 190.001 to 190.245 or rules adopted by the department pursuant to sections 190.001 to 190.245, its **[**trauma**]** center designation shall be revoked.

[3.**]** **4.** The department of health and senior services may establish appropriate fees to offset the costs of trauma**, STEMI, and stroke** center reviews.

[4.**]** **5.** No hospital shall hold itself out to the public as **[**an adult, pediatric or adult and pediatric trauma center**]** **a STEMI center, stroke center, adult trauma center, pediatric trauma center, or an adult and pediatric trauma center** unless it is designated as such by the department of health and senior services.

[5.**]** **6.** Any person aggrieved by an action of the department of health and senior services affecting the trauma**, STEMI, or stroke** center designation pursuant to this chapter, including the revocation, the suspension, or the granting of, refusal to grant, or failure to renew a designation, may seek a determination thereon by the administrative hearing commission **[**pursuant to the provisions of chapter 536**]** **under chapter 621**, RSMo. It shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing, or exhaust any other procedure within the department.

190.243. TRANSPORTATION TO TRAUMA, STEMI, OR STROKE CENTERS OR HOSPITALS, HOW AUTHORIZED. — 1. Severely injured patients shall be transported to a trauma center. **Patients who suffer a STEMI, as defined in section 190.100, shall be transported to a STEMI center. Patients who suffer a stroke, as defined in section 190.100, shall be transported to a stroke center.**

2. A physician or registered nurse authorized by a physician who has established verbal communication with ambulance personnel shall instruct the ambulance personnel to transport a severely **ill or** injured patient to the closest hospital or designated trauma**, STEMI, or stroke** center, as determined according to estimated transport time whether by ground ambulance or air ambulance, in accordance with transport protocol approved by the medical director and the department of health and senior services, even when the hospital is located outside of the ambulance service's primary service area. When initial transport from the scene of **illness or** injury to a trauma**, STEMI, or stroke** center would be prolonged, the **STEMI, stroke, or** severely injured patient may be transported to the nearest appropriate facility for stabilization prior to transport to a trauma**, STEMI, or stroke** center.

[2.**]** **3.** Transport of the **STEMI, stroke, or** severely injured patient shall be governed by principles of timely and medically appropriate care; consideration of reimbursement mechanisms shall not supersede those principles.

[3.**]** **4.** Patients who **[**are not severely injured**]** **do not meet the criteria for direct transport to a trauma, STEMI, or stroke center** shall be transported to and cared for at the hospital of their choice so long as such ambulance service is not in violation of local protocols.

190.245. PEER REVIEW SYSTEMS, REQUIRED WHEN — POWERS OF DEPARTMENT — MEDICAL RECORDS, PENALTY FOR FAILURE TO PROVIDE, PURPOSE FOR USE, NAMES NOT TO BE RELEASED. — The department shall require hospitals, as defined by chapter 197, RSMo, designated as trauma**, STEMI, or stroke** centers to provide for a peer review system, approved by the department, for trauma**, STEMI, and stroke** cases **[**pursuant to the provisions of**] , respective to their designations, under** section 537.035, RSMo. For purposes of sections 190.241 to 190.245, the department of health and senior services shall have the same powers and authority of a health care licensing board pursuant to subsection 6 of section 537.035, RSMo. Failure of a hospital to provide all medical records necessary for the department to implement provisions of sections 190.241 to 190.245 shall result in the revocation of the hospital's designation as a trauma**, STEMI, or stroke** center. Any medical records obtained by the department or peer review committees shall be used only for purposes of implementing the provisions of sections 190.241 to 190.245 and the names of hospitals, physicians and patients shall not be released by the department or members of review committees.

Approved July 10, 2008

HB 1791 [HB 1791]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Defines "licensed professional counselor" and includes these individuals as mental health professionals working in the Division of Comprehensive Psychiatric Services

AN ACT to repeal section 632.005, RSMo, and to enact in lieu thereof one new section relating to licensed professional counselors.

SECTION
A. Enacting clause.
632.005. Definitions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 632.005, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 632.005, to read as follows:

632.005. DEFINITIONS. — As used in chapter 631, RSMo, and this chapter, unless the context clearly requires otherwise, the following terms shall mean:

(1) "Comprehensive psychiatric services", any one, or any combination of two or more, of the following services to persons affected by mental disorders other than mental retardation or developmental disabilities: inpatient, outpatient, day program or other partial hospitalization, emergency, diagnostic, treatment, liaison, follow-up, consultation, education, rehabilitation, prevention, screening, transitional living, medical prevention and treatment for alcohol abuse, and medical prevention and treatment for drug abuse;

(2) "Council", the Missouri advisory council for comprehensive psychiatric services;

(3) "Court", the court which has jurisdiction over the respondent or patient;

(4) "Division", the division of comprehensive psychiatric services of the department of mental health;

(5) "Division director", director of the division of comprehensive psychiatric services of the department of mental health, or his designee;

(6) "Head of mental health facility", superintendent or other chief administrative officer of a mental health facility, or his designee;

(7) "Judicial day", any Monday, Tuesday, Wednesday, Thursday or Friday when the court is open for business, but excluding Saturdays, Sundays and legal holidays;

(8) "Licensed physician", a physician licensed pursuant to the provisions of chapter 334, RSMo, or a person authorized to practice medicine in this state pursuant to the provisions of section 334.150, RSMo;

(9) **"Licensed professional counselor", a person licensed as a professional counselor under chapter 337, RSMo, and with a minimum of one year training or experience in providing psychiatric care, treatment, or services in a psychiatric setting to individuals suffering from a mental disorder;**

(10) "Likelihood of serious harm" means any one or more of the following but does not require actual physical injury to have occurred:

(a) A substantial risk that serious physical harm will be inflicted by a person upon his own person, as evidenced by recent threats, including verbal threats, or attempts to commit suicide or inflict physical harm on himself. Evidence of substantial risk may also include information about patterns of behavior that historically have resulted in serious harm previously being inflicted by a person upon himself;

(b) A substantial risk that serious physical harm to a person will result or is occurring because of an impairment in his capacity to make decisions with respect to his hospitalization and need for treatment as evidenced by his current mental disorder or mental illness which results in an inability to provide for his own basic necessities of food, clothing, shelter, safety or medical care or his inability to provide for his own mental health care which may result in a substantial risk of serious physical harm. Evidence of that substantial risk may also include information about patterns of behavior that historically have resulted in serious harm to the person previously taking place because of a mental disorder or mental illness which resulted in his inability to provide for his basic necessities of food, clothing, shelter, safety or medical or mental health care; or

(c) A substantial risk that serious physical harm will be inflicted by a person upon another as evidenced by recent overt acts, behavior or threats, including verbal threats, which have caused such harm or which would place a reasonable person in reasonable fear of sustaining such harm. Evidence of that substantial risk may also include information about patterns of behavior that historically have resulted in physical harm previously being inflicted by a person upon another person;

[(10)**]** **(11)** "Mental health coordinator", a mental health professional employed by the state of Missouri who has knowledge of the laws relating to hospital admissions and civil commitment and who is appointed by the director of the department, or his designee, to serve a designated geographic area or mental health facility and who has the powers, duties and responsibilities provided in this chapter;

[(11)**]** **(12)** "Mental health facility", any residential facility, public or private, or any public or private hospital, which can provide evaluation, treatment and, inpatient care to persons suffering from a mental disorder or mental illness and which is recognized as such by the department or any outpatient treatment program certified by the department of mental health. No correctional institution or facility, jail, regional center or mental retardation facility shall be a mental health facility within the meaning of this chapter;

[(12)**]** **(13)** "Mental health professional", a psychiatrist, resident in psychiatry, psychologist, psychiatric nurse**, licensed professional counselor,** or psychiatric social worker;

[(13)**]** **(14)** "Mental health program", any public or private residential facility, public or private hospital, public or private specialized service or public or private day program that can provide care, treatment, rehabilitation or services, either through its own staff or through contracted providers, in an inpatient or outpatient setting to persons with a mental disorder or mental illness or with a diagnosis of alcohol abuse or drug abuse which is recognized as such

by the department. No correctional institution or facility or jail may be a mental health program within the meaning of this chapter;

[(14)**] (15)** "Ninety-six hours" shall be construed and computed to exclude Saturdays, Sundays and legal holidays which are observed either by the court or by the mental health facility where the respondent is detained;

[(15)**] (16)** "Peace officer", a sheriff, deputy sheriff, county or municipal police officer or highway patrolman;

[(16)**] (17)** "Psychiatric nurse", a registered professional nurse who is licensed under chapter 335, RSMo, and who has had at least two years of experience as a registered professional nurse in providing psychiatric nursing treatment to individuals suffering from mental disorders;

[(17)**] (18)** "Psychiatric social worker", a person with a master's or further advanced degree from an accredited school of social work, practicing pursuant to chapter 337, RSMo, and with a minimum of one year training or experience in providing psychiatric care, treatment or services in a psychiatric setting to individuals suffering from a mental disorder;

[(18)**] (19)** "Psychiatrist", a licensed physician who in addition has successfully completed a training program in psychiatry approved by the American Medical Association, the American Osteopathic Association or other training program certified as equivalent by the department;

[(19)**] (20)** "Psychologist", a person licensed to practice psychology under chapter 337, RSMo, with a minimum of one year training or experience in providing treatment or services to mentally disordered or mentally ill individuals;

[(20)**] (21)** "Resident in psychiatry", a licensed physician who is in a training program in psychiatry approved by the American Medical Association, the American Osteopathic Association or other training program certified as equivalent by the department;

[(21)**] (22)** "Respondent", an individual against whom involuntary civil detention proceedings are instituted pursuant to this chapter;

[(22)**] (23)** "Treatment", any effort to accomplish a significant change in the mental or emotional conditions or the behavior of the patient consistent with generally recognized principles or standards in the mental health professions.

Approved June 19, 2008

HB 1804 [SCS HCS HB 1804]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding municipalities and repeals the limits on the expenditures of excursion gambling boat revenues in certain entitites

AN ACT to repeal sections 82.020 and 313.820, RSMo, and to enact in lieu thereof three new sections relating to cities, with an emergency clause for a certain section.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 82.020 and 313.820, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 77.105, 82.020, and 313.820, to read as follows:

77.105. BUDGET AND EXPENDITURES, APPROVAL BY ORDINANCE, MOTION, OR RESOLUTION REQUIRED. — The budget or any authorization to expend funds shall be approved by an ordinance, motion, or resolution that is approved by a majority of all the members elected to the governing body.

82.020. CONSTITUTIONAL CHARTER, CERTAIN CITIES AND TOWNS MAY ADOPT OR AMEND, PROCEDURE. — Any city or town under special charter, as defined in section 81.010, RSMo, and any other city in this state which now has or which may hereafter have a population of more than **[**ten**]** **five** thousand inhabitants according to the last preceding federal decennial census may frame and adopt or amend a charter for its own government by complying with the provisions of sections 19 and 20 of article VI of the constitution of this state, or any amendments thereof.

313.820. ADMISSION FEE, AMOUNT, DIVISION OF — LICENSEES SUBJECT TO ALL OTHER TAXES, COLLECTION OF NONGAMING TAXES BY DEPARTMENT OF REVENUE. — 1. An excursion boat licensee shall pay to the commission an admission fee of two dollars for each person embarking on an excursion gambling boat with a ticket of admission. One dollar of such fee shall be deposited to the credit of the gaming commission fund as authorized pursuant to section 313.835, and one dollar of such fee shall not be considered state funds and shall be paid to the home dock city or county. Subject to appropriation, one cent of such fee deposited to the credit of the gaming commission fund may be deposited to the credit of the compulsive gamblers fund created pursuant to the provisions of section 313.842. Nothing in this section shall preclude any licensee from charging any amount deemed necessary for a ticket of admission to any person embarking on an excursion gambling boat. If tickets are issued which are good for more than one excursion, the admission fee shall be paid to the commission for each person using the ticket on each excursion that the ticket is used. If free passes or complimentary admission tickets are issued, the excursion boat licensee shall pay to the commission the same fee upon these passes or complimentary tickets as if they were sold at the regular and usual admission rate; however, the excursion boat licensee may issue fee-free passes to actual and necessary officials and employees of the licensee or other persons actually working on the excursion gambling boat. The issuance of fee-free passes is subject to the rules of the commission, and a list of all persons to whom the fee-free passes are issued shall be filed with the commission.

2. All licensees are subject to all income taxes, sales taxes, earnings taxes, use taxes, property taxes or any other tax or fee now or hereafter lawfully levied by any political subdivision; however, no other license tax, permit tax, occupation tax, excursion fee, or taxes or fees shall be imposed, levied or assessed exclusively upon licensees by a political subdivision. All state taxes not connected directly to gambling games shall be collected by the department of revenue. Notwithstanding the provisions of section 32.057, RSMo, to the contrary, the department of revenue may furnish and the commission may receive tax information to determine if applicants or licensees are complying with the tax laws of this state; however, any tax information acquired by the commission shall not become public record and shall be used exclusively for commission business.

[3. Effective fiscal year 2008 and each fiscal year thereafter, the amount of expenditures from funds derived from admission fees paid to a home dock city or county, located in a home rule city with more than sixty thousand three hundred but fewer than sixty thousand four hundred inhabitants or in a county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, shall not exceed the

revenue received by the home dock city or county from admission fees for fiscal year 2007. In the case of a new excursion gambling boat located in a home rule city with more than sixty thousand three hundred but fewer than sixty thousand four hundred inhabitants or in a county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, the provisions of this section shall become effective two years from the opening of such excursion gambling boat and the amount of expenditures from funds derived from admission fees paid to a home dock city or county shall not exceed the average revenue received by the home dock city or county from admission fees for the first two fiscal years in which such excursion gambling boat opened for business. Effective fiscal year 2010 and each subsequent fiscal year until fiscal year 2015, the percentage of revenue derived by a home dock city or county, located in a home rule city with more than sixty thousand three hundred but fewer than sixty thousand four hundred inhabitants or in a county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, from such admission fees used for expenditures other than capital, cultural, and special law enforcement purpose expenditures shall be limited to not more than thirty percent. Effective fiscal year 2015 and each subsequent fiscal, the percentage of revenue derived by a home dock city or county, located in a home rule city with more than sixty thousand three hundred but fewer than sixty thousand four hundred inhabitants or in a county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, from such admission fees used for expenditures other than capital, cultural, and special law enforcement purpose expenditures shall be limited to not more than twenty percent.

4. After fiscal year 2007, in any fiscal year in which a home dock city or county, located in a home rule city with more than sixty thousand three hundred but fewer than sixty thousand four hundred inhabitants or in a county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, collects an amount over the limitation on expenditures of revenue derived from admission fees provided in subsection 3 of this section, such revenue shall be treated as if it were sales tax revenue within the meaning of section 67.505, RSMo, provided that the home dock city or county shall reduce its total general revenue property tax levy, in accordance with the method provided in subdivision (6) of subsection 3 of section 67.505, RSMo.

5. The provisions of subsections 3 and 4 of this section shall not affect the imposition or collection of a tax under section 313.822.**]**

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to clarify the law and avoid costly litigation for small special charter cities, the repeal and reenactment of section 82.020 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section 82.020 of this act shall be in full force and effect upon its passage and approval.

Approved June 25, 2008

HB 1807 [SCS HCS HB 1807]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Renames the State Schools for Severely Handicapped Children as the Missouri Schools for the Severely Disabled

AN ACT to repeal sections 162.675, 162.730, 162.740, 162.755, 162.780, 162.785, 162.810, and 168.520, RSMo, and to enact in lieu thereof eight new sections relating to Missouri schools for the severely disabled, with penalty provisions.

SECTION
A. Enacting clause.
162.675. Definitions.
162.730. State board to establish schools for severely disabled — special services for deaf — who shall provide — rules, procedure.
162.740. District of residence to pay toward cost, when — amount, how calculated.
162.755. Transportation to be provided children, sheltered workshop employees, social centers and residents of facilities for certain disabled persons, also certain state schools.
162.780. Care and control of property of state schools for severely disabled in state board of education.
162.785. State board authorized to acquire property and to receive and administer grants.
162.810. Employees not to have interest in sales to schools, penalty.
168.520. Career advancement program for personnel of state schools for the blind, deaf and severely disabled — salary supplement for participants.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 162.675, 162.730, 162.740, 162.755, 162.780, 162.785, 162.810, and 168.520, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 162.675, 162.730, 162.740, 162.755, 162.780, 162.785, 162.810, and 168.520, to read as follows:

162.675. DEFINITIONS. — As used in sections 162.670 to 162.995, unless the context clearly indicates otherwise, the following terms mean:

(1) "Children with disabilities" or "handicapped children", children under the age of twenty-one years who have not completed an approved high school program and who, because of mental, physical, emotional or learning problems, require special educational services;

(2) "Gifted children", children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent that continued educational growth and stimulation could best be served by an academic environment beyond that offered through a standard grade-level curriculum;

(3) "Severely handicapped children", handicapped children under the age of twenty-one years who meet the eligibility criteria for **[**state**]** **Missouri** schools for **[**severely handicapped children**]** **the severely disabled**, identified in state regulations that implement the Individuals with Disabilities Education Act;

(4) "Special educational services", programs designed to meet the needs of children with disabilities or handicapped or severely handicapped children and which include, but are not limited to, the provision of diagnostic and evaluation services, student and parent counseling, itinerant, homebound and referral assistance, organized instructional and therapeutic programs, transportation, and corrective and supporting services.

162.730. STATE BOARD TO ESTABLISH SCHOOLS FOR SEVERELY DISABLED — SPECIAL SERVICES FOR DEAF — WHO SHALL PROVIDE — RULES, PROCEDURE. — 1. The state board of education shall establish schools or programs in this state sufficient to provide special educational services for all severely handicapped children not residing in special school districts or in other school districts providing approved special educational services for severely handicapped children which schools or programs shall be referred to herein as **[**"state schools for severely handicapped children"**]** **"Missouri Schools for the Severely Disabled"**.

2. The Missouri School for the Blind at St. Louis and the Missouri School for the Deaf at Fulton are within the division of special **[**services**]** **education** of the department of elementary and secondary education. The state board of education shall govern these schools.

3. The state board of education:

(1) Shall determine the type and kind of instruction to be offered and the number and qualifications of instructors and other necessary personnel in the **[**state**]** **Missouri** schools for **the** severely **[**handicapped children**]** **disabled**, the school for the blind and the school for the deaf; provided, however, that the course of study of these schools shall be of a character to develop the mental, physical, vocational and social abilities of the pupils and to prepare those students capable of advancing for admission to postsecondary programs;

(2) Shall promulgate all rules and regulations governing enrollment, including that of assigning children to the most appropriate school or programs; and

(3) Shall determine and approve all policies for the operation of said schools or programs.

4. Notwithstanding any other provision of this section, each school district which is not a part of a special school district and each special school district shall provide special educational services for deaf children and youth within the ages of five through thirteen years residing in the district in accordance with rules, regulations and standards promulgated by the state board of education. Such services shall be provided within the district of residence or by contract with a nearby district or districts or nearby public agency or agencies pursuant to the provisions of sections 162.670 to 162.995, provided, however, that nothing herein shall be construed to affect the funding or operation of the Missouri School for the Deaf at Fulton nor to deny to any deaf child or youth within the age range prescribed above the right to enrollment therein.

5. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

162.740. DISTRICT OF RESIDENCE TO PAY TOWARD COST, WHEN — AMOUNT, HOW CALCULATED. — The district of residence of each child attending a **[**state school for severely handicapped children**]** **Missouri school for the severely disabled** or an educational program for a full-time patient or resident at a facility operated by the department of mental health, except school districts which are a part of a special district and except special school districts, shall pay toward the cost of the education of the child an amount equal to the average sum produced per child by the local tax effort of the district. The district of residence shall be notified each year, not later than December fifteenth, of the names and addresses of pupils enrolled in such schools. In the case of a special district, said special district shall be responsible for an amount per child not to exceed the average sum produced per child by the local tax efforts of the component districts. The district of residence of the child's parents or guardians shall be the district responsible for local tax contributions required by this section.

162.755. TRANSPORTATION TO BE PROVIDED CHILDREN, SHELTERED WORKSHOP EMPLOYEES, SOCIAL CENTERS AND RESIDENTS OF FACILITIES FOR CERTAIN DISABLED PERSONS, ALSO CERTAIN STATE SCHOOLS. — 1. The state board of education shall provide reasonable transportation for children who attend day schools or programs operated by the state board of education or who attend programs operated through contract by the state board of education as provided in section 162.735.

2. Sheltered workshops holding a certificate of approval from the department of elementary and secondary education under section 178.920, RSMo, and clients of other facilities operated under the provisions of sections 205.968 to 205.973, RSMo, and **[**state schools for the severely handicapped**]** **Missouri schools for the severely disabled** may cooperate in the provision of employee, client and student transportation. Employees of sheltered workshops and clients of other facilities operated under the provisions of sections 205.968 to 205.973, RSMo, may be transported to sheltered workshops and other facilities in vehicles owned and operated by the department of elementary and secondary education or hired by the department for student transportation or students may be transported in vehicles owned and operated or hired by sheltered workshops or other facilities operated under the provisions of sections 205.968 to 205.973, RSMo, to **[**state schools for the severely handicapped**]** **Missouri schools for the severely disabled**.

3. The provision of sheltered workshop employee or other client transportation in vehicles owned and operated or hired by the department of elementary and secondary education shall not unduly interfere with the routes and schedules of the **[**state schools for the severely handicapped**]** **Missouri schools for the severely disabled** and reasonable compensation may be paid by the sheltered workshop or other facility for the developmentally disabled to the department of elementary and secondary education.

4. The department of elementary and secondary education may secure transportation for students in **[**state schools for the severely handicapped**]** **the Missouri schools for the severely disabled** in vehicles owned and operated or hired by sheltered workshops or other facilities operated under the provisions of sections 205.968 to 205.973, RSMo, and make reasonable compensation for the service to the sheltered workshop or other facility for the developmentally disabled.

162.780. CARE AND CONTROL OF PROPERTY OF STATE SCHOOLS FOR SEVERELY DISABLED IN STATE BOARD OF EDUCATION. — The state board of education shall have the care and control of all property, real and personal, necessary for the operation of **[**the state schools for severely handicapped children**]** **the Missouri schools for the severely disabled**, the school for the blind and the school for the deaf. The state board of education shall not sell or in any manner dispose of any real estate purchased by tax moneys belonging to the schools without an act of the general assembly authorizing the sale or other disposition. The state board of education may sell, convey, exchange or convert into money property of any nature, real, personal or mixed, acquired from individuals or corporations by grant, gift, bequest, devise or donation to these schools or any of them.

162.785. STATE BOARD AUTHORIZED TO ACQUIRE PROPERTY AND TO RECEIVE AND ADMINISTER GRANTS. — 1. The state board of education may acquire by purchase, lease, gift, bequest, eminent domain, or otherwise, all necessary lands, buildings or equipment, including transportation facilities, for the use and benefit of the Missouri School for the Blind, the Missouri School for the Deaf and the **[**state schools for severely handicapped children**]** **Missouri schools for the severely disabled**. Whenever the board selects property or additional property for school purposes and cannot agree with the owner thereof as to the price to be paid, or for any other cause cannot secure a title thereto, the board may proceed to condemn the property in the manner provided in chapter 523, RSMo, and on such condemnation and payment of the appraisement as provided, the title to the property shall vest in the state board of education for the use and benefit of the school or schools for which it was required.

2. The state board of education may receive and administer any grants, gifts, devises, bequests or donations by any individual or corporation to the **[**state schools for severely handicapped children**]** **Missouri schools for the severely disabled**, or any of them, the Missouri School for the Blind or the Missouri School for the Deaf. Grants, gifts, devises, bequests or donations made for a specified use shall not be applied either wholly or in part to any other use.

162.810. EMPLOYEES NOT TO HAVE INTEREST IN SALES TO SCHOOLS, PENALTY. — No employee of **[**the state schools for severely handicapped children**]** **Missouri schools for the severely disabled**, the Missouri School for the Blind or the Missouri School for the Deaf shall keep for sale or be interested, directly or indirectly, in the sale or exchange of any school furniture or apparatus, books, maps, charts, stationery, or other property or food used in the schools. Any employee found to be so interested, upon conviction, shall be adjudged guilty of a misdemeanor.

168.520. CAREER ADVANCEMENT PROGRAM FOR PERSONNEL OF STATE SCHOOLS FOR THE BLIND, DEAF AND SEVERELY DISABLED — SALARY SUPPLEMENT FOR PARTICIPANTS. — 1. For the purpose of providing career pay, which shall be a salary supplement for teachers, librarians, guidance counselors and certificated teachers who hold positions as school

psychological examiners, parents-as-teachers educators, school psychologists, special education diagnosticians or speech pathologists in **[**the state schools for the severely handicapped**]** **Missouri schools for the severely disabled**, the Missouri School for the Blind and the Missouri School for the Deaf, there is hereby established a career advancement program which shall become effective no later than September 1, 1986. Participation in the career advancement program by teachers shall be voluntary.

2. The department of elementary and secondary education with the recommendation of teachers from the state schools, shall develop a career plan. This state career plan shall include, but need not be limited to, the provisions of state model career plans as contained in subsection 2 of section 168.500.

3. After a teacher who is duly employed by a state school qualifies and is selected for participation in the state career plan established under this section, such a teacher shall not be denied the career pay authorized by such plan except as provided in subdivisions (1), (2), and (3) of section 168.510.

4. Each teacher selected to participate in the career plan established under this section who meets the requirements of such plan, shall receive a salary supplement as provided in subdivisions (1), (2), and (3) of subsection 1 of section 168.515.

5. The department of elementary and secondary education shall annually include within its budget request to the general assembly sufficient funds for the purpose of providing career pay as established under this section to those eligible teachers employed in **[**state schools for the severely handicapped**]** **Missouri schools for the severely disabled**, the Missouri School for the Deaf, and the Missouri School for the Blind.

Approved June 10, 2008

HB 1828 [HB 1828]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Requires the Director of the Department of Revenue to establish and enforce reasonable sales and use tax rules and regulations

AN ACT to repeal section 144.270, RSMo, and to enact in lieu thereof one new section relating to sales and use tax regulations.

SECTION
A. Enacting clause.
144.270. Rulemaking authority.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 144.270, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 144.270, to read as follows:

144.270. RULEMAKING AUTHORITY. — For the purpose of more efficiently securing the payment of and accounting for the tax imposed by **[**sections 144.010 to 144.510**]** **this chapter**, the director of revenue shall make, promulgate and enforce reasonable rules and regulations for the administration and enforcement of the provisions of **[**sections 144.010 to 144.510**]** **this chapter**.

Approved June 19, 2008

HB 1849 [HB 1849]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws governing municipal zoning violation remedies

AN ACT to repeal section 89.120, as enacted by senate committee substitute for house substitute for house committee substitute for house bills nos. 977 & 1608, eighty-ninth general assembly, second regular session, and section 89.120, as enacted by senate committee substitute for house bill no. 1352, eighty-ninth general assembly, second regular session, and to enact in lieu thereof one new section relating to zoning violation remedies, with penalty provisions.

SECTION
A. Enacting clause.
89.120. Violations — penalties.
89.120. Violations — penalties.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 89.120, as enacted by senate committee substitute for house substitute for house committee substitute for house bills nos. 977 & 1608, eighty-ninth general assembly, second regular session, and section 89.120, as enacted by senate committee substitute for house bill no. 1352, eighty-ninth general assembly, second regular session, is repealed and one new section enacted in lieu thereof, to be known as section 89.120, to read as follows:

89.120. VIOLATIONS — PENALTIES. — 1. In case any building or structure is erected, constructed, reconstructed, altered, converted**,** or maintained, or any building, structure**,** or land is used in violation of sections 89.010 to 89.140 or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance**,** or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. Such regulations shall be enforced by an officer empowered to cause any building, structure, place**,** or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of the regulations made under authority of sections 89.010 to 89.140.

2. The owner or general agent of a building or premises where a violation of any provision of said regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee**,** or tenant of any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor**,** or any other person who commits, takes part or assists in any such violation**,** or who maintains any building or premises in which any such violation shall exist shall be guilty of a misdemeanor punishable as follows:

(1) In any **[**municipality contained wholly or partially within a county**] city** with **[**a population of over six hundred thousand and less than nine**] more than three** hundred thousand **inhabitants**, by a fine of not less than ten dollars and not more than five hundred dollars for each and every day that such violation continues**,** or by imprisonment for ten days for each and every day such violation shall continue**,** or by both such fine and imprisonment in the discretion of the

court. Notwithstanding the provisions of section 82.300, RSMo, however, for the second and subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than two hundred and fifty dollars or more than one thousand dollars for each and every day that such violation shall continue**,** or by imprisonment for ten days for each and every day such violation shall continue**,** or by both such fine and imprisonment in the discretion of the court;

(2) In all other municipalities, by a fine of not less than ten dollars and not more than **[**one**]** **two** hundred **fifty** dollars for each and every day that such violation continues, **[**but if the offense be willful on conviction thereof, the punishment shall be a fine of not less than one hundred dollars or more than two hundred and fifty dollars for each and every day that such violation shall continue**]** or by imprisonment for ten days for each and every day such violation shall continue**,** or by both such fine and imprisonment in the discretion of the court. **Notwithstanding the provisions of section 82.300, RSMo, for the second and subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than one hundred dollars or more than five hundred dollars for each and every day that such violation shall continue, or by imprisonment for ten days for each and every day such violation shall continue, or by both such fine and imprisonment in the discretion of the court.**

3. Any such person who**,** having been served with an order to remove any such violation**,** shall fail to comply with such order within ten days after such service or shall continue to violate any provision of the regulations made under authority of sections 89.010 to 89.140 in the respect named in such order shall also be subject to a civil penalty of two hundred and fifty dollars.

[89.120. VIOLATIONS — PENALTIES. — 1. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of sections 89.010 to 89.140 or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. Such regulations shall be enforced by an officer empowered to cause any building, structure, place or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of the regulations made pursuant to the authority of sections 89.010 to 89.140.

2. Except as provided in subsection 4 of this section, the owner or general agent of a building or premises where a violation of any provision of said regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee or tenant of any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars and not more than two hundred fifty dollars for each and every day that such violation continues or by imprisonment for ten days for each and every day such violation shall continue or by both such fine and imprisonment in the discretion of the court. Notwithstanding the provisions of section 82.300, RSMo, however, for the second and subsequent offenses involving the same violation at the same building or premises, the punishment shall be a fine of not less than one hundred dollars or more than five hundred dollars for each and every day that such violation shall continue or by imprisonment for ten days for each and every day such violation shall continue or by both such fine and imprisonment in the discretion of the court.

3. Any such person who having been served with an order to remove any such violation shall fail to comply with such order within ten days after such service or shall continue to violate any provision of the regulations made under authority of sections 89.010 to 89.140 in the respect named in such order shall also be subject to a civil penalty of two hundred and fifty dollars.

4. In a city with a population of more than three hundred fifty thousand, the owner or general agent of a building or premises where a violation of any provision of said regulations has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the owner, general agent, lessee or tenant of any part of the building or premises in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars and not more than two hundred fifty dollars for each and every day that such violation continues, but if the offense be willful on conviction thereof, the punishment shall be a fine of not less than one hundred dollars or more than five hundred dollars for each and every day that such violation shall continue or by imprisonment for ten days for each and every day such violation shall continue or by both such fine and imprisonment in the discretion of the court.]

Approved June 25, 2008

HB 1869 [HB 1869]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Requires the Missouri Revisor of Statutes to change all references of the term "junior college" to "community college" in the Revised Statutes of Missouri

AN ACT to amend chapter 174, RSMo, by adding thereto one new section relating to junior colleges.

SECTION
A. Enacting clause.
174.805. Junior college to be referred to as community college in state statutes.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 174, RSMo, is amended by adding thereto one new section, to be known as section 174.805, to read as follows:

174.805. JUNIOR COLLEGE TO BE REFERED TO AS COMMUNITY COLLEGE IN STATE STATUTES. — The term "junior college" shall be referred to as "community college". The revisor of statutes shall make the appropriate changes to all such references in the revised statutes.

Approved June 19, 2008

HB 1881 [HB 1881]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the term of office for the initially appointed directors of public water supply districts

AN ACT to repeal section 247.060, RSMo, and to enact in lieu thereof one new section relating to county water supply districts.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 247.060, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 247.060, to read as follows:

247.060. BOARD OF DIRECTORS — POWERS — QUALIFICATIONS — APPOINTMENT — TERMS — VACANCIES, HOW FILLED — ELECTIONS HELD, WHEN, PROCEDURE. — 1. The management of the business and affairs of the district is hereby vested in a board of directors, who shall have all the powers conferred upon the district except as herein otherwise provided, who shall serve without pay. It shall be composed of five members, each of whom shall be a voter of the district and shall have resided in said district one whole year immediately prior to his election. A member shall be at least twenty-five years of age and shall not be delinquent in the payment of taxes at the time of his election. Except as provided in subsection 2 of this section, the term of office of a member of the board shall be three years. The remaining members of the board shall appoint a qualified person to fill any vacancy on the board. If no qualified person who lives in the subdistrict for which there is a vacancy is willing to serve on the board, the board may appoint an otherwise qualified person, who lives in the district but not in the subdistrict in which the vacancy exists to fill such vacancy.

2. After notification by certified mail that he or she has two consecutive unexcused absences, any member of the board failing to attend the meetings of the board for three consecutive regular meetings, unless excused by the board for reasons satisfactory to the board, shall be deemed to have vacated the seat, and the secretary of the board shall certify that fact to the board. The vacancy shall be filled as other vacancies occurring in the board.

3. The initial members of the board shall be appointed by the circuit court and one shall serve until the immediately following first Tuesday after the first Monday in **[**June**]** **April**, two shall serve until the first Tuesday after the first Monday in **[**June**]** **April** on the second year following their appointment and the remaining appointees shall serve until the first Tuesday after the first Monday in **[**June**]** **April** on the third year following their appointment. On the expiration of such terms and on the expiration of any subsequent term, elections shall be held as otherwise provided by law, and such elections shall be held in April pursuant to section 247.180.

4. In 2008, 2009, and 2010, directors elected in such years shall serve from the first Tuesday after the first Monday in June until the first Tuesday in April of the third year following the year of their election. All directors elected thereafter shall serve from the first Tuesday in April until the first Tuesday in April of the third year following the year of their election.

Approved June 19, 2008

HB 1883 [SCS HCS HB 1883]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding employment practices

AN ACT to repeal sections 287.020, 287.200, 287.230, 290.505, and 320.336, RSMo, and to enact in lieu thereof seven new sections relating to employment, with penalty provisions and an emergency clause for certain sections.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 287.020, 287.200, 287.230, 290.505, and 320.336, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 285.035, 287.020, 287.200, 287.230, 290.505, 290.523, and 320.336, to read as follows:

285.035. MICROCHIP TECHNOLOGY, EMPLOYER NOT TO REQUIRE EMPLOYEES TO BE IMPLANTED — VIOLATION, PENALTY. — 1. No employer shall require an employee to have personal identification microchip technology implanted into an employee for any reason.

2. For purposes of this section, "personal identification microchip technology" means a subcutaneous or surgically implanted microchip technology device or product that contains or is designed to contain a unique identification number and personal information that can be non-invasively retrieved or transmitted with an external scanning device.

3. Any employer who violates this section is guilty of a class A misdemeanor.

287.020. DEFINITIONS — INTENT TO ABROGATE EARLIER CASE LAW. — 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. **Except as otherwise provided in section 287.200,** any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subsection 43 of section 301.010, RSMo, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies.

2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

(4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.

(5) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

4. "Death" when mentioned as a basis for the right to compensation means only death resulting from such violence and its resultant effects occurring within three hundred weeks after the accident; except that in cases of occupational disease, the limitation of three hundred weeks shall not be applicable.

5. Injuries sustained in company-owned or subsidized automobiles in accidents that occur while traveling from the employee's home to the employer's principal place of business or from the employer's principal place of business to the employee's home are not compensable. The extension of premises doctrine is abrogated to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from their place of employment.

6. The term "total disability" as used in this chapter shall mean inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

7. As used in this chapter and all acts amendatory thereof, the term "commission" shall hereafter be construed as meaning and referring exclusively to the labor and industrial relations commission of Missouri, and the term "director" shall hereafter be construed as meaning the director of the department of insurance of the state of Missouri or such agency of government as shall exercise the powers and duties now conferred and imposed upon the department of insurance of the state of Missouri.

8. The term "division" as used in this chapter means the division of workers' compensation of the department of labor and industrial relations of the state of Missouri.

9. For the purposes of this chapter, the term "minor" means a person who has not attained the age of eighteen years; except that, for the purpose of computing the compensation provided for in this chapter, the provisions of section 287.250 shall control.

10. In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment" to include, but not be limited to, holdings in: Bennett v. Columbia Health Care and Rehabilitation, 80 S.W.3d 524 (Mo.App. W.D. 2002); Kasl v. Bristol Care, Inc., 984 S.W.2d 852 (Mo.banc 1999); and Drewes v. TWA, 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or following those cases.

287.200. PERMANENT TOTAL DISABILITY, AMOUNT TO BE PAID — SUSPENSION OF PAYMENTS, WHEN. — 1. Compensation for permanent total disability shall be paid during the continuance of such disability for the lifetime of the employee at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made. **The word "employee" as used in this section shall not include the injured worker's dependents, estate, or other persons to whom compensation may be payable as provided in subsection 1 of section 287.020.** The amount of such compensation shall be computed as follows:

(1) For all injuries occurring on or after September 28, 1983, but before September 28, 1986, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings during the year immediately preceding the injury, as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(2) For all injuries occurring on or after September 28, 1986, but before August 28, 1990, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings during the year immediately preceding the injury, as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to seventy-five percent of the state average weekly wage, as such wage is determined by the division of employment security, as of the July first immediately preceding the date of injury;

(3) For all injuries occurring on or after August 28, 1990, but before August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred percent of the state average weekly wage;

(4) For all injuries occurring on or after August 28, 1991, the weekly compensation shall be an amount equal to sixty-six and two-thirds percent of the injured employee's average weekly earnings as of the date of the injury; provided that the weekly compensation paid under this subdivision shall not exceed an amount equal to one hundred five percent of the state average weekly wage;

(5) For all injuries occurring on or after September 28, 1981, the weekly compensation shall in no event be less than forty dollars per week.

2. **Permanent total disability benefits that have accrued through the date of the injured employee's death are the only permanent total disability benefits that are to be paid in accordance with section 287.230. The right to unaccrued compensation for permanent total disability of an injured employee terminates on the date of the injured employee's death in accordance with section 287.230, and does not survive to the injured employee's dependents, estate, or other persons to whom compensation might otherwise be payable.**

3. All claims for permanent total disability shall be determined in accordance with the facts. When an injured employee receives an award for permanent total disability but by the use of glasses, prosthetic appliances, or physical rehabilitation the employee is restored to his regular

work or its equivalent, the life payment mentioned in subsection 1 of this section shall be suspended during the time in which the employee is restored to his regular work or its equivalent. The employer and the division shall keep the file open in the case during the lifetime of any injured employee who has received an award of permanent total disability. In any case where the life payment is suspended under this subsection, the commission may at reasonable times review the case and either the employee or the employer may request an informal conference with the commission relative to the resumption of the employee's weekly life payment in the case.

287.230. PAYMENT OF COMPENSATION AT DEATH OF EMPLOYEE — EXCEPTIONS — ABROGATION OF CASE LAW. — 1. The death of the injured employee shall not affect the liability of the employer to furnish compensation as in this chapter provided, so far as the liability has accrued and become payable at the time of the death, and any accrued and unpaid compensation due the employee shall be paid to his dependents without administration, or if there are no dependents, to his personal representative or other persons entitled thereto, but the death shall be deemed to be the termination of the disability.

2. Where an employee is entitled to compensation under this chapter**, exclusive of compensation as provided for in section 287.200,** for an injury received and death ensues for any cause not resulting from the injury for which **[**he**]** **the employee** was entitled to compensation, **[**payments of the unpaid accrued compensation shall be paid, but**]** payments of the unpaid unaccrued **[**balance**]** **compensation under section 287.190 and no other compensation** for the injury shall **[**cease and all liability therefor shall terminate unless there are**]** **be paid to the** surviving dependents at the time of death.

3. In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate the holding in Schoemehl v. Treasurer of the State of Missouri, 217 S.W.3d 900 (Mo. 2007), and all cases citing, interpreting, applying, or following this case.

290.505. OVERTIME COMPENSATION, APPLICABLE NUMBER OF HOURS, EXCEPTIONS. — 1. No employer shall employ any of his employees for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

2. Employees of an amusement or recreation business that meets the criteria set out in 29 U.S.C. 213(a) (3) must be paid one and one-half times their regular compensation for any hours worked in excess of fifty-two hours in any one-week period.

3. With the exception of employees described in subsection (2), the overtime requirements of subsection (1) shall not apply to employees who are exempt from federal minimum wage or overtime requirements **[**pursuant to 29 U.S.C. §§ 213(a)-(b)**]** **including, but not limited to, the exemptions or hour calculation formulas specified in 29 U.S.C. Sections 207 and 213, and any regulations promulgated thereunder.**

4. Except as may be otherwise provided under sections 290.500 to 290.530, this section shall be interpreted in accordance with the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended, and the Portal to Portal Act, 29 U.S.C. Section 251, et seq., as amended, and any regulations promulgated thereunder.

290.523. RULEMAKING AUTHORITY. — The department may, in accordance with chapter 536, RSMo, promulgate such rules and regulations as are necessary for the enforcement and administration of sections 290.500 to 290.530. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the

general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annual a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

320.336. TERMINATION FROM EMPLOYMENT PROHIBITED, WHEN — LOSS OF PAY PERMITTED, WHEN — WRITTEN VERIFICATION OF SERVICE PERMITTED — EMPLOYER NOTIFICATION REQUIREMENTS. — 1. No public or private employer shall terminate an employee for joining any fire department or fire protection district, including but not limited to any municipal, volunteer, rural, or subscription fire department or organization**[**, a**]** **or any** volunteer fire protection association, as a volunteer firefighter, **or the** Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, or Urban Search and Rescue Team**, or being activated to a national disaster response by the Federal Emergency Management Agency (FEMA)**.

2. No public or private employer shall terminate an employee who is a volunteer firefighter, a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, or Urban Search and Rescue Team because the employee, when acting as a volunteer firefighter, **or as** a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, **[**or**]** Urban Search and Rescue Team**, or FEMA** is absent from or late to his or her employment in order to respond to an emergency before the time the employee is to report to his or her place of employment.

3. An employer may charge against the employee's regular pay any **employment** time **[**that**] lost by** an employee who is a volunteer firefighter, **or** a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, **[**or**]** Urban Search and Rescue Team **[**loses from employment**] , or FEMA** because of the employee's response to an emergency in the course of performing his or her duties as a volunteer firefighter, **or** a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, **[**or**]** Urban Search and Rescue Team**, or FEMA**.

4. In the case of an employee who is a volunteer firefighter, **or** a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, **[**or**]** Urban Search and Rescue Team**, or FEMA** and who loses time from his or her employment in order to respond to an emergency in the course of performing his or her duties as a volunteer firefighter, **or** a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, **[**or**]** Urban Search and Rescue Team, **or FEMA,** the employer has the right to request the employee to provide the employer with a written statement from the supervisor or acting supervisor of the volunteer fire department or the commander of Missouri-1 Disaster Medical Assistance Team **or the FEMA supervisor** stating that the employee responded to an emergency and stating the time and date of the emergency.

5. An employee who is a volunteer firefighter, or a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, **[**or**]** Urban Search and Rescue Team**, or FEMA** and who may be absent from or late to his or her employment in order to respond to an emergency in the course of performing his or her duties as a volunteer firefighter, or a member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, **[**or**]** Urban Search and Rescue Team**, or FEMA** shall make a reasonable effort to notify his or her employer that he or she may be absent or late.

SECTION B. EMERGENCY CLAUSE. — Because of the need to clarify workers' compensation laws and preserve the solvency of the workers' compensation system, the repeal and reenactment of sections 287.020, 287.200, and 287.230 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment

of sections 287.020, 287.200, and 287.230 of this act shall be in full force and effect upon its passage and approval.

Approved June 26, 2008

HB 1887 [HB 1887]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Designates a portion of State Highway 13 in Polk County as the "Rick Seiner Memorial Highway"

AN ACT to amend chapter 227, RSMo, by adding thereto one new section relating to the designation of a memorial highway.

SECTION
A. Enacting clause.
227.397. Rick Seiner Memorial highway designated for portion of Highway 13 in Polk County.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 227, RSMo, is amended by adding thereto one new section, to be known as section 227.397, to read as follows:

227.397. RICK SEINER MEMORIAL HIGHWAY DESIGNATED FOR PORTION OF HIGHWAY 13 IN POLK COUNTY. — The portion of highway 13 from the intersection of highway 83 to the intersection of highway Y in Polk county shall be designated the "Rick Seiner Memorial Highway". The department of transportation shall erect and maintain appropriate signs designating such highway designation, with the cost to be paid for by private donation.

Approved June 17, 2008

HB 1888 [HCS HB 1888]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Allows a municipality to annex land within the airport zone of the City of Sprinfield if it agrees to enforce Springfield's zoning ordinance

AN ACT to repeal sections 89.080, 89.090, and 305.410, RSMo, and to enact in lieu thereof three new sections relating to airport zoning.

SECTION
A. Enacting clause.
89.080. Board of adjustment — appointment — term — vacancies — organization.
89.090. Board of adjustment — powers, exception for Kansas City.
305.410. Annexation of land within airport zone prohibited, exceptions — enforcement authority — board of adjustment authorized (Greene County).

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 89.080, 89.090, and 305.410, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 89.080, 89.090, and 305.410, to read as follows:

89.080. BOARD OF ADJUSTMENT — APPOINTMENT — TERM — VACANCIES — ORGANIZATION. — Such local legislative body shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of sections 89.010 to 89.140 may provide that the board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The board of adjustment shall consist of five members, who shall be residents of the municipality **except as provided in section 305.410, RSMo**. The membership of the first board appointed shall serve respectively, one for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter members shall be appointed for terms of five years each. Three alternate members may be appointed to serve in the absence of or the disqualification of the regular members. All members and alternates shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect its own chairman who shall serve for one year. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to sections 89.010 to 89.140. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. All testimony, objections thereto and rulings thereon, shall be taken down by a reporter employed by the board for that purpose.

89.090. BOARD OF ADJUSTMENT — POWERS, EXCEPTION FOR KANSAS CITY. — 1. The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 89.010 to 89.140 or of any ordinance adopted pursuant to such sections;

(2) To hear and decide all matters referred to it or upon which it is required to pass under such ordinance;

(3) In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the construction or alteration of buildings or structures or the use of land so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done, provided that, in any city with a population of three hundred fifty thousand or more inhabitants which is located in more than one county, the board of adjustment shall not have the power to vary or modify any ordinance relating to the use of land.

2. In exercising the above-mentioned powers such board may, in conformity with the provisions of sections 89.010 to 89.140, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance **except as provided in section 305.410, RSMo**.

305.410. ANNEXATION OF LAND WITHIN AIRPORT ZONE PROHIBITED, EXCEPTIONS — ENFORCEMENT AUTHORITY — BOARD OF ADJUSTMENT AUTHORIZED (GREENE COUNTY). — **1.** Notwithstanding any other law to the contrary, annexation of land located within an airport zone by any city, town or village other than the municipality which owns the airport is prohibited, nor shall any areas be incorporated in such airport zones.

2. Notwithstanding the provisions of subsection 1 of this section, a city, town, or village may annex land located within an airport zone if the city, town, or village has entered into an agreement under section 70.220, RSMo, with the municipality that owns the airport. Under the agreement, the city, town, or village shall adopt the airport zoning ordinance of the municipality owning the airport and shall agree to enforce and administer the terms of such airport zoning ordinance. Any city, town, or village, including its officers or employees, that has agreed to enforce and administer the airport zoning ordinance of the municipality that owns the airport who fails to enforce or administer the airport zoning ordinance or the terms of an agreement for enforcement and administration shall be subject to injunction, quo warranto, mandamus, or the remedies set forth in the agreement. If the city, town, or village fails to enforce the municipality's airport zoning law, the municipality owning the airport shall, in addition to all other remedies provided for in this section, have the right to enforce the zoning law against the violator by injunction or declaratory judgment.

3. Notwithstanding any other law to the contrary, the powers of the board of adjustment under section 89.080, RSMo, may be vested in a new board of adjustment consisting of members of the board of adjustment of the municipality that own the airport and the members of the board of adjustment of the city, town, or village that annexes land within the airport zone in accordance with an agreement to enforce and administer the zoning regulations set forth in section 305.405 and the airport zoning ordinance of the municipality that owns the airport. Notwithstanding the provisions of section 89.090, RSMo, or any other law to the contrary, the concurring vote of eight members of the new board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

Approved June 6, 2008

HB 1893 [HCS HB 1893]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the formula for calculating a refund for credit insurance premiums

AN ACT to repeal section 385.050, RSMo, and to enact in lieu thereof one new section relating to premium refund calculations for credit insurance.

SECTION
A. Enacting clause.
385.050. Revision of premium schedules, procedure for — refunds paid, when — limit on charge for credit life.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 385.050, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 385.050, to read as follows:

385.050. REVISION OF PREMIUM SCHEDULES, PROCEDURE FOR — REFUNDS PAID, WHEN — LIMIT ON CHARGE FOR CREDIT LIFE. — 1. Any insurer may revise its schedules of premium rates from time to time and shall file the revised schedules with the director. No insurer shall issue any credit life insurance policy or credit accident and sickness insurance policy for which the premium rate exceeds that determined by the schedules of the insurer as then approved by the director.

2. Each individual policy or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, however, that no refund of less than one dollar need be made. The formula to be used in computing the refund shall be the actuarial method of calculating refunds which produces a refund equal to the original premium multiplied by the ratio of the sum of the remaining insured balances divided by the sum of the original insured balances **[**as of the due date nearest the date of prepayment in full**]**. **In determining the number of months for which a premium is earned, the first month's premium may be considered as earned on the first day of coverage and for all successive months' premiums, on the coverage anniversary date in each successive month.**

3. If a creditor requires a debtor to make any payment for credit life insurance or credit accident and sickness insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.

4. The amount charged to a debtor for any credit life or credit accident and sickness insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

5. Nothing in sections 385.010 to 385.080 shall be construed to authorize any payments for insurance now prohibited under any statute, or rule thereunder, governing credit transactions.

Approved June 19, 2008

HB 1946 [SCS HB 1946]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the requirements regarding the granting of adoption subsidies and exempts certain neighborhood youth development programs from state child care licensing requirements

AN ACT to repeal sections 453.072 and 453.073, RSMo, and to enact in lieu thereof three new sections relating to adoption subsidies.

SECTION
A. Enacting clause.
210.278. Exempt from licensure, when.
453.072. Qualified relatives to receive subsidies, when.
453.073. Subsidy to adopted child — determination of — how paid — written agreement.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 453.072 and 453.073, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 210.278, 453.072, and 453.073, to read as follows:

210.278. EXEMPT FROM LICENSURE, WHEN. — Neighborhood youth development programs shall be exempt from the child care licensing provisions under this chapter so long as the program meets the following requirements:

(1) The program is affiliated and in good standing with a national congressionally chartered organization's standards under Title 36, Public Law 105-225;

(2) The program provides activities designed for recreational, educational, and character building purposes for children six to seventeen years of age;

(3) The governing body of the program adopts standards for care that at a minimum include staff ratios, staff training, health and safety standards, and mechanisms for assessing and enforcing the program's compliance with the standards;

(4) The program does not collect compensation for its services except for one-time annual membership dues not to exceed fifty dollars per year or program service fees for special activities such as field trips or sports leagues, except for current exemptions as written in section 210.211;

(5) The program informs each parent that the operations of the program is not regulated by licensing requirements;

(6) The program provides a process to receive and resolve parental complaints; and

(7) The program conducts national criminal background checks for all employees and volunteers who work with children, as well as screening under the family care safety registry as provided in sections 210.900 to 210.936.

453.072. QUALIFIED RELATIVES TO RECEIVE SUBSIDIES, WHEN. — Any subsidies available to adoptive parents pursuant to section 453.073 and section 453.074 shall also be available to a qualified relative of a child who is granted legal guardianship of the child in the same manner as such subsidies are available for adoptive parents**[**, including income restrictions as provided in subsection 4 of section 453.073**]**. As used in this section "relative" means any grandparent, aunt, uncle, adult sibling of the child or adult first cousin of the child.

453.073. SUBSIDY TO ADOPTED CHILD — DETERMINATION OF — HOW PAID — WRITTEN AGREEMENT. — 1. The children's division is authorized to grant a subsidy to a child in one of the forms of allotment defined in section 453.065. Determination of the amount of monetary need is to be made by the division at the time of placement, if practicable, and in reference to the needs of the child, including consideration of the physical and mental condition, and age of the child in each case; provided, however, that the subsidy amount shall not exceed the expenses of foster care and medical care for foster children paid under the homeless, dependent and neglected foster care program.

2. The subsidy shall be paid for children who have been in the care and custody of the children's division under the homeless, dependent and neglected foster care program. In the case of a child who has been in the care and custody of a private child-caring or child-placing agency or in the care and custody of the division of youth services or the department of mental health, a subsidy shall be available from the children's division subsidy program in the same manner and under the same circumstances and conditions as provided for a child who has been in the care and custody of the children's division.

3. Within thirty days after the authorization for the grant of a subsidy by the children's division, a written agreement shall be entered into by the division and the parents. The agreement shall set forth the following terms and conditions:

(1) The type of allotment;

(2) The amount of assistance payments;

(3) The services to be provided;

(4) The time period for which the subsidy is granted **[**shall not exceed one year. The agreement can be renewed for subsequent years at the discretion of the director. All existing

agreements will have deemed to have expired one year after they were initially entered into**], if such period is reasonably ascertainable**;

(5) The obligation of the parents to inform the division when they are no longer providing support to the child or when events affect the subsidy eligibility of the child;

(6) The eligibility of the child for Medicaid.

[4. The subsidy shall only be granted to children who reside in a household with an income that does not exceed two hundred percent of the federal poverty level or are eligible for Title IV-E adoption assistance.**]**

Approved July 10, 2008

HB 1952 [HB 1952]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Designates the bridge over the Gasconade River on U. S. Highway 63 in Maries County as the "Roy Bassett Memorial Bridge"

AN ACT to amend chapter 227, RSMo, by adding thereto one new section relating to the designation of a memorial bridge.

SECTION

A. Enacting clause.

227.389. Roy Bassett Memorial Bridge designated for U.S. Highway 63 Gasconade River Bridge in Maries County.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 227, RSMo, is amended by adding thereto one new section, to be known as section 227.389, to read as follows:

227.389. ROY BASSETT MEMORIAL BRIDGE DESIGNATED FOR U.S. HIGHWAY 63 GASCONADE RIVER BRIDGE IN MARIES COUNTY. — The U.S. Highway 63 Gasconade River Bridge in Maries County shall be designated the "Roy Bassett Memorial Bridge". Costs for such designation shall be paid by friends of Roy Bassett.

Approved June 17, 2008

HB 1970 [HB 1970]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Prohibits a person from initiating a civil action against any licensed motor vehicle dealer with whom the person did not directly and personally negotiate or communicate

AN ACT to amend chapter 407, RSMo, by adding thereto one new section relating to motor vehicle dealers.

SECTION

A. Enacting clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 407, RSMo, is amended by adding thereto one new section, to be known as section 407.1373, to read as follows:

407.1373. PRIVATE CIVIL ACTION AGAINST PROHIBITED EXCEPT IF A COMMERCIAL RELATIONSHIP EXISTED--DEFINITION OF COMMERCIAL RELATIONSHIP. — Notwithstanding any other provision of law to the contrary, no person, as defined in section 407.010, may bring a private civil action seeking monetary damages or other relief against any licensed motor vehicle dealer with whom such person did not have a commercial relationship. For purposes of this section, "commercial relationship" shall mean a relationship between a person and a licensed motor vehicle dealer which thereby directly results in the retail sale or lease of a motor vehicle or other related merchandise from that motor vehicle dealer to the retail purchaser or lessee but shall not include any motor vehicle dealer in the chain of commerce with whom the purchaser or lessee did not directly and personally negotiate or communicate. No provision in this section shall prohibit a person from pursuing against a manufacturer or seller of a new or used automobile any claim not arising under Chapter 407.

Approved July 10, 2008

HB 2034 [SCS HCS HB 2034]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding weapons

AN ACT to repeal sections 537.294, 571.010, 571.020, 571.070, and 571.101, RSMo, and to enact in lieu thereof nine new sections relating to weapons, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 537.294, 571.010, 571.020, 571.070, and 571.101, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as

sections 537.294, 537.355, 571.010, 571.014, 571.020, 571.070, 571.072, 571.093, and 571.101, to read as follows:

537.294. FIREARM RANGES — DEFINITIONS — NOT TO BE DEEMED A NUISANCE, WHEN — IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY, WHEN. — 1. As used in this section, the **[**term**]** **following terms shall mean:**

(1) "Firearm range" **[**means**] ,** any rifle, pistol, silhouette, skeet, trap, blackpowder or other similar range in this state used for discharging firearms in a sporting event or for practice or instruction in the use of a firearm, or for the testing of a firearm**;**

(2) "Hunting preserve", any hunting preserve or licensed shooting area operating under a permit granted by the Missouri department of conservation.

2. All owners **and authorized users** of firearm ranges **[**in existence on August 13, 1988,**]** shall be immune from any criminal **and civil** liability arising out of or as a consequence of noise or sound emission resulting from the **[**normal**]** use of any such firearm range. Owners **and users** of such firearm ranges shall not be subject to any **civil** action **in tort or subject to any action** for public or private nuisance or trespass and no court in this state shall enjoin the use or operation of such firearm ranges on the basis of noise or sound emission resulting from the **[**normal**]** use of any such firearm range. **[**The term "normal use" of a firearm range, as used in this subsection, means the average level of use of the firearm range during the twelve months preceding August 13, 1988**] Any actions by a court in this state to enjoin the use or operation of such firearm ranges and any damages awarded or imposed by a court, or assessed by a jury, in this state against any owner or user of such firearm ranges for nuisance or trespass are null and void**.

3. **[**All owners of firearms ranges placed in operation after August 13, 1988, shall be immune from any criminal liability and shall not be subject to any action for public or private nuisance or trespass arising out of or as a consequence of noise or sound emission resulting from the normal use of any such firearm range, if such firearm range conforms to any one of the following requirements:

(1) Any area from which any firearm may be properly discharged is at least one thousand yards from any occupied permanent dwelling on adjacent property;

(2) Any area from which any rifle or pistol may be properly discharged is enclosed by a permanent building or structure that absorbs or contains the sound energy escaping from the muzzle of firearms in use; or

(3) If the firearm range is situated on land otherwise subject to land use zoning, the firearm range is in compliance with the requirements of the zoning authority regarding the sound deflection or absorbent baffles, barriers, or other sound emission control requirements**] All owners and authorized users of existing hunting preserves or areas that are designated as hunting preserves after the effective date of this section shall be immune from any criminal and civil liability arising out of or as a consequence of noise or sound emission resulting from the normal use of any such hunting preserve. Owners or authorized users of such hunting preserves shall not be subject to any action for public or private nuisance or trespass, and no court in this state shall enjoin the use or operation of such hunting preserves on the basis of noise or sound emission resulting from normal use of any such hunting preserve.**

4. Notwithstanding any other provision of law to the contrary, nothing in this section shall be construed to limit civil liability for compensatory damage arising from physical injury to another human, physical injury to tangible personal property, or physical injury to fixtures or structures placed on real property.

537.355. PRIVATE PROPERTY, PERMISSION BY OWNER TO HUNT, FISH, OR RECREATE, LIMITATION ON PRIVILEGE. — An owner of land who either directly or indirectly invites or permits without charge any person to use such property for hunting or fishing

purposes or other recreational purpose, including but not limited to, any aircraft or ultralight vehicle activity, does not thereby:

(1) Confer upon such person the legal status of an invitee or licensee and owes to such person only the duty of care as is owed to a trespasser under the law;

(2) Without the failure to exercise just ordinary care, assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of such persons while hunting or fishing or engaging in other recreational activities, such as operating aircraft or ultralight vehicles;

(3) Without the failure to exercise just ordinary care, assume responsibility for or incur liability for any injury to persons or property, wherever such persons or property are located, caused while hunting or fishing or engaging in other recreational activities, such as operating aircraft or ultralight vehicles.

571.010. DEFINITIONS. — As used in this chapter**, the following terms shall mean**:

(1) "Antique, curio or relic firearm" **[**means**] ,** any firearm so defined by the National Gun Control Act, 18 U.S.C. Title 26, Section 5845, and the United States Treasury/Bureau of Alcohol Tobacco and Firearms, 27 CFR Section 178.11:

(a) Antique firearm is any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, said ammunition not being manufactured any longer; this includes any matchlock, wheel lock, flintlock, percussion cap or similar type ignition system, or replica thereof;

(b) Curio or relic firearm is any firearm deriving value as a collectible weapon due to its unique design, ignition system, operation or at least fifty years old, associated with a historical event, renown personage or major war;

(2) "Blackjack" **[**means**]** , any instrument that is designed or adapted for the purpose of stunning or inflicting physical injury by striking a person, and which is readily capable of lethal use;

(3) **"Blasting agent", any material or mixture, consisting of fuel and oxidizer that is intended for blasting, but not otherwise defined as an explosive under this section, provided that the finished product, as mixed for use of shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined;**

(4) "Concealable firearm" **[**means**]** , any firearm with a barrel less than sixteen inches in length, measured from the face of the bolt or standing breech;

[(4)**]** **(5)** "Deface" **[**means**]** , to alter or destroy the manufacturer's or importer's serial number or any other distinguishing number or identification mark;

(6) "Detonator", any device containing a detonating charge that is used for initiating detonation in an explosive, including but not limited to, electric blasting caps of instantaneous and delay types, non-electric blasting caps for use with safety fuse or shock tube and detonating-cord delay connectors;

[(5)**]** **(7)** "Explosive weapon" **[**means**]** , any explosive, incendiary, or poison gas bomb or similar device designed or adapted for the purpose of inflicting death, serious physical injury, or substantial property damage; or any device designed or adapted for delivering or shooting such a weapon**. For the purposes of this subdivision, the term "explosive" shall mean any chemical compound mixture or device, the primary or common purpose of which is to function by explosion, including but not limited to, dynamite and other high explosives, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cords, igniter cords, and igniters or blasting agents**;

[(6)**]** **(8)** "Firearm" **[**means**]** , any weapon that is designed or adapted to expel a projectile by the action of an explosive;

[(7)**]** **(9)** "Firearm silencer" **[**means**]** , any instrument, attachment, or appliance that is designed or adapted to muffle the noise made by the firing of any firearm;

[(8)**]** **(10)** "Gas gun" **[**means**]** , any gas ejection device, weapon, cartridge, container or contrivance other than a gas bomb, that is designed or adapted for the purpose of ejecting any poison gas that will cause death or serious physical injury, but not any device that ejects a repellant or temporary incapacitating substance;

[(9)**]** **(11)** "Intoxicated" **[**means**]**, substantially impaired mental or physical capacity resulting from introduction of any substance into the body;

[(10)**]** **(12)** "Knife" **[**means**]** , any dagger, dirk, stiletto, or bladed hand instrument that is readily capable of inflicting serious physical injury or death by cutting or stabbing a person. For purposes of this chapter, "knife" does not include any ordinary pocketknife with no blade more than four inches in length;

[(11)**]** **(13)** "Knuckles" **[**means**]** , any instrument that consists of finger rings or guards made of a hard substance that is designed or adapted for the purpose of inflicting serious physical injury or death by striking a person with a fist enclosed in the knuckles;

[(12)**]** **(14)** "Machine gun" **[**means**]** , any firearm that is capable of firing more than one shot automatically, without manual reloading, by a single function of the trigger;

[(13)**]** **(15)** "Projectile weapon" **[**means**]** , any bow, crossbow, pellet gun, slingshot or other weapon that is not a firearm, which is capable of expelling a projectile that could inflict serious physical injury or death by striking or piercing a person;

[(14)**]** **(16)** "Rifle" **[**means**]** , any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed metallic cartridge to fire a projectile through a rifled bore by a single function of the trigger;

[(15)**]** **(17)** "Short barrel" **[**means**]** , a barrel length of less than sixteen inches for a rifle and eighteen inches for a shotgun, both measured from the face of the bolt or standing breech, or an overall rifle or shotgun length of less than twenty-six inches;

[(16)**]** **(18)** "Shotgun" **[**means**]** , any firearm designed or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire a number of shot or a single projectile through a smooth bore barrel by a single function of the trigger;

[(17)**]** **(19)** "Spring gun" **[**means**]** , any fused, timed or nonmanually controlled trap or device designed or adapted to set off an explosion for the purpose of inflicting serious physical injury or death;

[(18)**]** **(20)** "Switchblade knife" **[**means**]** , any knife which has a blade that folds or closes into the handle or sheath, and**:**

(a) That opens automatically by pressure applied to a button or other device located on the handle; or

(b) That opens or releases from the handle or sheath by the force of gravity or by the application of centrifugal force.

571.014. UNLAWFUL REFUSAL TO TRANSFER BY DENYING SALE OF A FIREARM TO A NONLICENSEE, CRIME OF — VIOLATION, PENALTY — INAPPLICABILITY, WHEN. — 1. A person commits the crime of unlawful refusal to transfer by denying sale of a firearm to a non-licensee, who is otherwise not prohibited from possessing a firearm under state or federal law, solely on the basis that the non-licensee purchased a firearm that was later the subject of a trace request by law enforcement.

2. Violation of subsection 1 of this section shall be a class A misdemeanor.

3. Notwithstanding any other provision of law to the contrary, no federal firearms dealer licensed under 18 U.S.C. Section 923 who engages in the sale of firearms within this state shall fail or refuse to complete the sale of a firearm to a customer in every case in which the sale is authorized by federal law.

4. The provisions of this section shall not apply to any individual federal firearms license holder, his agents, or employees to the extent they chose in their individual judgment to not complete the sale or transfer of a firearm for articulable reasons specific

to that transaction, so long as those reasons are not based on the race, gender, religion, creed of the buyer.

571.020. POSSESSION — MANUFACTURE — TRANSPORT — REPAIR — SALE OF CERTAIN WEAPONS A CRIME — EXCEPTIONS — PENALTIES. — 1. A person commits a crime if such person knowingly possesses, manufactures, transports, repairs, or sells:

(1) An explosive weapon;

(2) An explosive, incendiary or poison substance or material with the purpose to possess, manufacture or sell an explosive weapon;

(3) A machine gun;

(4) A gas gun;

(5) A short barreled rifle or shotgun;

(6) A firearm silencer;

(7) A switchblade knife;

(8) A bullet or projectile which explodes or detonates upon impact because of an independent explosive charge after having been shot from a firearm; or

(9) Knuckles.

2. A person does not commit a crime pursuant to this section if his conduct:

(1) Was incident to the performance of official duty by the armed forces, national guard, a governmental law enforcement agency, or a penal institution; or

(2) Was incident to engaging in a lawful commercial or business transaction with an organization enumerated in subdivision (1) of this section; or

(3) Was incident to using an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise; or

(4) Was incident to displaying the weapon in a public museum or exhibition; or

(5) Was incident to dealing with the weapon solely as a curio, ornament, or keepsake, or to using it in a manner reasonably related to a lawful dramatic performance; but if the weapon is a type described in subdivision (1)**[**,**]** **or** (4) **[**or (6)**]** of subsection 1 of this section it must be in such a nonfunctioning condition that it cannot readily be made operable. No short barreled rifle, short barreled shotgun, **[**or**]** machine gun**, or firearm silencer** may be possessed, manufactured, transported, repaired or sold as a curio, ornament, or keepsake, unless such person is an importer, manufacturer, dealer, or collector licensed by the Secretary of the Treasury pursuant to the Gun Control Act of 1968, U.S.C., Title 18, or unless such firearm is an "antique firearm" as defined in subsection 3 of section 571.080, or unless such firearm has been designated a "collectors item" by the Secretary of the Treasury pursuant to the U.S.C., Title 26, Section 5845(a).

3. A crime pursuant to subdivision (1), (2), (3), (4), (5) or (6) of subsection 1 of this section is a class C felony; a crime pursuant to subdivision (7), (8) or (9) of subsection 1 of this section is a class A misdemeanor.

571.070. POSSESSION OF FIREARM UNLAWFUL FOR CERTAIN PERSONS — PENALTY. — 1. A person commits the crime of unlawful possession of a **[**concealable**]** firearm if **[**he**]** **such person knowingly** has any **[**concealable**]** firearm in his **or her** possession and:

(1) **[**He has pled guilty to or**]** Such person has been convicted of a **[**dangerous**]** felony**[**, as defined in section 556.061, RSMo, or of an attempt to commit a dangerous felony**]** **under the laws of this state**, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a **[**dangerous**]** felony**[**, or confined therefor in this state or elsewhere during the five-year period immediately preceding the date of such possession**]**; or

(2) **[**He**]** **Such person** is a fugitive from justice, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent.

2. Unlawful possession of a **[**concealable**]** firearm is a class C felony.

571.072. UNLAWFUL POSSESSION OF AN EXPLOSIVE WEAPON, CRIME OF — PENALTY. — 1. A person commits the crime of unlawful possession of an explosive weapon if he or she has any explosive weapon in his or her possession and:

(1) He or she has pled guilty to or has been convicted of a dangerous felony, as defined in section 556.061, RSMo, or of an attempt to commit a dangerous felony, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a dangerous felony, or confined therefor in this state or elsewhere during the five-year period immediately preceding the date of such possession; or

(2) He or she is a fugitive from justice, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent.

2. Unlawful possession of an explosive weapon is a class C felony.

571.093. CERTAIN RECORDS CLOSED TO THE PUBLIC. — If any sheriff retains records of permits to obtain concealable firearms issued under former section 571.090, as repealed by senate bills nos. 62 and 41 of the ninety-fourth general assembly, then such records shall be closed to the public. No such record shall be made available for any purpose whatsoever unless its disclosure is mandated by a valid court order relating to a criminal investigation.

571.101. CONCEALED CARRY ENDORSEMENTS, APPLICATION REQUIREMENTS — APPROVAL PROCEDURES — ISSUANCE OF CERTIFICATES, WHEN — RECORD-KEEPING REQUIREMENTS — FEES. — 1. All applicants for concealed carry endorsements issued pursuant to subsection 7 of this section must satisfy the requirements of sections 571.101 to 571.121. If the said applicant can show qualification as provided by sections 571.101 to 571.121, the county or city sheriff shall issue a certificate of qualification for a concealed carry endorsement. Upon receipt of such certificate, the certificate holder shall apply for a driver's license or nondriver's license with the director of revenue in order to obtain a concealed carry endorsement. Any person who has been issued a concealed carry endorsement on a driver's license or nondriver's license and such endorsement or license has not been suspended, revoked, canceled, or denied may carry concealed firearms on or about his or her person or within a vehicle. A concealed carry endorsement shall be valid for a period of three years from the date of issuance or renewal. The concealed carry endorsement is valid throughout this state.

2. A certificate of qualification for a concealed carry endorsement issued pursuant to subsection 7 of this section shall be issued by the sheriff or his or her designee of the county or city in which the applicant resides, if the applicant:

(1) Is at least twenty-three years of age, is a citizen of the United States and either:

(a) Has **[**resided**]** **assumed residency** in this state **[**for at least six months**]**; or

(b) Is a member of the armed forces stationed in Missouri, or the spouse of such member of the military;

(2) Has not pled guilty to or entered a plea of nolo contendere or been convicted of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of one year or less that does not involve an explosive weapon, firearm, firearm silencer or gas gun;

(3) Has not been convicted of, pled guilty to or entered a plea of nolo contendere to one or more misdemeanor offenses involving crimes of violence within a five-year period immediately preceding application for a certificate of qualification for a concealed carry endorsement or if the applicant has not been convicted of two or more misdemeanor offenses involving driving while under the influence of intoxicating liquor or drugs or the possession or abuse of a controlled substance within a five-year period immediately preceding application for a certificate of qualification for a concealed carry endorsement;

(4) Is not a fugitive from justice or currently charged in an information or indictment with the commission of a crime punishable by imprisonment for a term exceeding one year under the laws of any state of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of two years or less that does not involve an explosive weapon, firearm, firearm silencer, or gas gun;

(5) Has not been discharged under dishonorable conditions from the United States armed forces;

(6) Has not engaged in a pattern of behavior, documented in public records, that causes the sheriff to have a reasonable belief that the applicant presents a danger to himself or others;

(7) Is not adjudged mentally incompetent at the time of application or for five years prior to application, or has not been committed to a mental health facility, as defined in section 632.005, RSMo, or a similar institution located in another state following a hearing at which the defendant was represented by counsel or a representative;

(8) Submits a completed application for a certificate of qualification as defined in subsection 3 of this section;

(9) Submits an affidavit attesting that the applicant complies with the concealed carry safety training requirement pursuant to subsections 1 and 2 of section 571.111;

(10) Is not the respondent of a valid full order of protection which is still in effect.

3. The application for a certificate of qualification for a concealed carry endorsement issued by the sheriff of the county of the applicant's residence shall contain only the following information:

(1) The applicant's name, address, telephone number, gender, and date and place of birth;

(2) An affirmation that the applicant **[**is a resident of the state of**]** has assumed residency in Missouri **[**and has been a resident thereof for the last six months**]** or is a member of the armed forces stationed in Missouri or the spouse of such a member of the armed forces and is a citizen of the United States;

(3) An affirmation that the applicant is at least twenty-three years of age;

(4) An affirmation that the applicant has not pled guilty to or been convicted of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of one year or less that does not involve an explosive weapon, firearm, firearm silencer, or gas gun;

(5) An affirmation that the applicant has not been convicted of, pled guilty to, or entered a plea of nolo contendere to one or more misdemeanor offenses involving crimes of violence within a five-year period immediately preceding application for a certificate of qualification to obtain a concealed carry endorsement or if the applicant has not been convicted of two or more misdemeanor offenses involving driving while under the influence of intoxicating liquor or drugs or the possession or abuse of a controlled substance within a five-year period immediately preceding application for a certificate of qualification to obtain a concealed carry endorsement;

(6) An affirmation that the applicant is not a fugitive from justice or currently charged in an information or indictment with the commission of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of two years or less that does not involve an explosive weapon, firearm, firearm silencer or gas gun;

(7) An affirmation that the applicant has not been discharged under dishonorable conditions from the United States armed forces;

(8) An affirmation that the applicant is not adjudged mentally incompetent at the time of application or for five years prior to application, or has not been committed to a mental health facility, as defined in section 632.005, RSMo, or a similar institution located in another state, except that a person whose release or discharge from a facility in this state pursuant to chapter

632, RSMo, or a similar discharge from a facility in another state, occurred more than five years ago without subsequent recommitment may apply;

(9) An affirmation that the applicant has received firearms safety training that meets the standards of applicant firearms safety training defined in subsection 1 or 2 of section 571.111;

(10) An affirmation that the applicant, to the applicant's best knowledge and belief, is not the respondent of a valid full order of protection which is still in effect; and

(11) A conspicuous warning that false statements made by the applicant will result in prosecution for perjury pursuant to the laws of the state of Missouri.

4. An application for a certificate of qualification for a concealed carry endorsement shall be made to the sheriff of the county or any city not within a county in which the applicant resides. An application shall be filed in writing, signed under oath and under the penalties of perjury, and shall state whether the applicant complies with each of the requirements specified in subsection 2 of this section. In addition to the completed application, the applicant for a certificate of qualification for a concealed carry endorsement must also submit the following:

(1) A photocopy of a firearms safety training certificate of completion or other evidence of completion of a firearms safety training course that meets the standards established in subsection 1 or 2 of section 571.111; and

(2) A nonrefundable certificate of qualification fee as provided by subsection 10 or 11 of this section.

5. Before an application for a certificate of qualification for a concealed carry endorsement is approved, the sheriff shall make only such inquiries as he or she deems necessary into the accuracy of the statements made in the application. The sheriff may require that the applicant display a Missouri driver's license or nondriver's license or military identification and orders showing the person being stationed in Missouri. In order to determine the applicant's suitability for a certificate of qualification for a concealed carry endorsement, the applicant shall be fingerprinted. The sheriff shall request a criminal background check through the appropriate law enforcement agency within three working days after submission of the properly completed application for a certificate of qualification for a concealed carry endorsement. If no disqualifying record is identified by the fingerprint check at the state level, the fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check. Upon receipt of the completed background check, the sheriff shall issue a certificate of qualification for a concealed carry endorsement within three working days. The sheriff shall issue the certificate within forty-five calendar days if the criminal background check has not been received, provided that the sheriff shall revoke any such certificate and endorsement within twenty-four hours of receipt of any background check that results in a disqualifying record, and shall notify the department of revenue.

6. The sheriff may refuse to approve an application for a certificate of qualification for a concealed carry endorsement if he or she determines that any of the requirements specified in subsection 2 of this section have not been met, or if he or she has a substantial and demonstrable reason to believe that the applicant has rendered a false statement regarding any of the provisions of sections 571.101 to 571.121. If the applicant is found to be ineligible, the sheriff is required to deny the application, and notify the applicant in writing, stating the grounds for denial and informing the applicant of the right to submit, within thirty days, any additional documentation relating to the grounds of the denial. Upon receiving any additional documentation, the sheriff shall reconsider his or her decision and inform the applicant within thirty days of the result of the reconsideration. The applicant shall further be informed in writing of the right to appeal the denial pursuant to subsections 2, 3, 4, and 5 of section 571.114. After two additional reviews and denials by the sheriff, the person submitting the application shall appeal the denial pursuant to subsections 2, 3, 4, and 5 of section 571.114.

7. If the application is approved, the sheriff shall issue a certificate of qualification for a concealed carry endorsement to the applicant within a period not to exceed three working days after his or her approval of the application. The applicant shall sign the certificate of qualification

in the presence of the sheriff or his or her designee and shall within seven days of receipt of the certificate of qualification take the certificate of qualification to the department of revenue. Upon verification of the certificate of qualification and completion of a driver's license or nondriver's license application pursuant to chapter 302, RSMo, the director of revenue shall issue a new driver's license or nondriver's license with an endorsement which identifies that the applicant has received a certificate of qualification to carry concealed weapons issued pursuant to sections 571.101 to 571.121 if the applicant is otherwise qualified to receive such driver's license or nondriver's license. The requirements for the director of revenue to issue a concealed carry endorsement pursuant to this subsection shall not be effective until July 1, 2004, and the certificate of qualification issued by a county sheriff pursuant to subsection 1 of this section shall allow the person issued such certificate to carry a concealed weapon pursuant to the requirements of subsection 1 of section 571.107 in lieu of the concealed carry endorsement issued by the director of revenue from October 11, 2003, until the concealed carry endorsement is issued by the director of revenue on or after July 1, 2004, unless such certificate of qualification has been suspended or revoked for cause.

8. The sheriff shall keep a record of all applications for a certificate of qualification for a concealed carry endorsement and his or her action thereon. The sheriff shall report the issuance of a certificate of qualification to the Missouri uniform law enforcement system. All information on any such certificate that is protected information on any driver's or nondriver's license shall have the same personal protection for purposes of sections 571.101 to 571.121. An applicant's status as a holder of a certificate of qualification or a concealed carry endorsement shall not be public information and shall be considered personal protected information. Any person who violates the provisions of this subsection by disclosing protected information shall be guilty of a class A misdemeanor.

9. Information regarding any holder of a certificate of qualification or a concealed carry endorsement is a closed record.

10. For processing an application for a certificate of qualification for a concealed carry endorsement pursuant to sections 571.101 to 571.121, the sheriff in each county shall charge a nonrefundable fee not to exceed one hundred dollars which shall be paid to the treasury of the county to the credit of the sheriff's revolving fund.

11. For processing a renewal for a certificate of qualification for a concealed carry endorsement pursuant to sections 571.101 to 571.121, the sheriff in each county shall charge a nonrefundable fee not to exceed fifty dollars which shall be paid to the treasury of the county to the credit of the sheriff's revolving fund.

12. For the purposes of sections 571.101 to 571.121, the term "sheriff" shall include the sheriff of any county or city not within a county or his or her designee and in counties of the first classification the sheriff may designate the chief of police of any city, town, or municipality within such county.

Approved June 26, 2008

HB 2036 [HCS HB 2036]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Requires the Department of Health and Senior Services to equitably distribute to each area agency on aging any additional funds appropriated by the General Assembly for certain elderly services

AN ACT to repeal section 660.099, RSMo, and to enact in lieu thereof one new section relating to appropriation of funds for certain services for the elderly.

SECTION
A. Enacting clause.
660.099. General assembly may make additional appropriations, purposes.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 660.099, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 660.099, to read as follows:

660.099. GENERAL ASSEMBLY MAY MAKE ADDITIONAL APPROPRIATIONS, PURPOSES. — 1. The general assembly may appropriate funds in addition to the amount currently being provided per annum for nutrition services for the elderly. Funds so designated to provide nutrition services for the elderly shall be allocated to the Missouri **[**division of aging**]** **department of health and senior services** to be **[**placed on the formula basis and**]** **equitably** distributed to each area agency on aging throughout the state of Missouri **based upon formulas promulgated by the department of health and senior services**.

2. The general assembly may appropriate funds in addition to the amount currently being provided per annum through the Missouri elderly and handicapped transportation program. Funds so designated to provide transportation for the elderly and developmentally disabled shall be allocated to the Missouri **[**division of aging**]** **department of health and senior services** to be **[**placed on the formula basis and**]** **equitably** distributed to each area agency on aging throughout the state of Missouri **based upon formulas promulgated by the department of health and senior services**.

3. The general assembly may appropriate funds in addition to the amount currently being provided per annum for home-delivered meals for the elderly. Such additional funds shall be allocated to the Missouri **[**division of aging**]** **department of health and senior services** to be **[**placed on the formula basis and**]** **equitably** distributed to each area agency on aging throughout the state of Missouri **based upon formulas promulgated by the department of health and senior services**.

Approved June 10, 2008

HB 2041 [SCS HCS HB 2041]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding employment

AN ACT to repeal sections 178.585, 288.040, 288.042, 288.070, 288.250, and 290.505, RSMo, and to enact in lieu thereof ten new sections relating to employment, with penalty provisions, an effective date for certain sections, and an emergency clause for a certain section.

SECTION
A. Enacting clause.
178.585. Upgrade of vocational and technical education — advisory committees — listing of demand occupations — use of funds.
285.035. Microchip technology, employer not to require employees to be implanted — violation, penalty.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 178.585, 288.040, 288.042, 288.070, 288.250, and 290.505, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 178.585, 285.035, 288.040, 288.042, 288.070, 288.131, 288.250, 288.312, 290.505, and 290.523, to read as follows:

178.585. UPGRADE OF VOCATIONAL AND TECHNICAL EDUCATION — ADVISORY COMMITTEES — LISTING OF DEMAND OCCUPATIONS — USE OF FUNDS. — 1. Under rules and regulations of the state board of education, the commissioner of education, in cooperation with the director of the division of **[**employment security**]** **workforce development** of the department of **[**labor and industrial relations**]** **economic development**, shall establish procedures to provide grants to public high schools, vocational-technical schools, Linn State Technical College, and community colleges solely for the purpose of new programs, curriculum enhancement, equipment and facilities so as to upgrade vocational and technical education in the state.

2. Each vocational-technical school, community college, Linn State Technical College, and school district of any public high school receiving a grant authorized by this section shall have an advisory committee composed of local business persons, labor leaders, parents, senior citizens, community leaders and teachers to establish a plan to ensure that students who graduate from the vocational-technical school, community college, Linn State Technical College, or public high school proceed to a four-year college or high wage job with workplace-skill development opportunities.

3. **[**Beginning July 1, 1994,**]** The director of the **[**division of employment security of the**]** department of **[**labor and industrial relations**]** **economic development** shall provide annually to the commissioner of education a listing of demand occupations in the state including substate projections. The listing shall include those occupations for which, in the judgment of the director of the **[**division of employment security**]** **department of economic development**, there is a critical shortage to meet present or future employment needs necessary to the economic growth and competitiveness of the state.

4. In any fiscal year, at least seventy-five percent of all moneys for the grant awards authorized by this section shall be to public high schools, vocational-technical schools, Linn State Technical College, or community colleges for new programs, curriculum enhancement or equipment necessary to address demand occupations identified pursuant to subsection 3 of this section.

285.035. MICROCHIP TECHNOLOGY, EMPLOYER NOT TO REQUIRE EMPLOYEES TO BE IMPLANTED — VIOLATION, PENALTY. — 1. No employer shall require an employee to have personal identification microchip technology implanted into the employee for any reason.

2. For purposes of this section, "personal identification microchip technology" means a subcutaneous or surgically implanted microchip technology device or product that contains or is designed to contain a unique identification number and personal

information that can be non-invasively retrieved or transmitted with an external scanning device.

3. Any employer who violates this section is guilty of a class A misdemeanor.

288.040. ELIGIBILITY FOR BENEFITS — EXCEPTIONS — REPORT, CONTENTS. — 1. A claimant who is unemployed and has been determined to be an insured worker shall be eligible for benefits for any week only if the deputy finds that:

(1) The claimant has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the division may prescribe;

(2) The claimant is able to work and is available for work. No person shall be deemed available for work unless such person has been and is actively and earnestly seeking work. Upon the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter, the deputy shall notify each claimant of the number of work search contacts required to constitute an active search for work. No person shall be considered not available for work, pursuant to this subdivision, solely because he or she is a substitute teacher or is on jury duty. A claimant shall not be determined to be ineligible pursuant to this subdivision because of not actively and earnestly seeking work if:

(a) The claimant is participating in training approved pursuant to Section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; however, upon application of the employer responsible for the claimant's unemployment, such eight-week period may be extended not to exceed a total of sixteen weeks at the discretion of the director;

(3) The claimant has reported in person to an office of the division as directed by the deputy, but at least once every four weeks, except that a claimant shall be exempted from the reporting requirement of this subdivision if:

(a) The claimant is claiming benefits in accordance with division regulations dealing with partial or temporary total unemployment; or

(b) The claimant is temporarily unemployed through no fault of his or her own and has a definite recall date within eight weeks of his or her first day of unemployment; or

(c) The claimant resides in a county with an unemployment rate, as published by the division, of ten percent or more and in which the county seat is more than forty miles from the nearest division office;

(d) The director of the division of employment security has determined that the claimant belongs to a group or class of workers whose opportunities for reemployment will not be enhanced by reporting in person, or is prevented from reporting due to emergency conditions that limit access by the general public to an office that serves the area where the claimant resides, but only during the time such circumstances exist.

Ineligibility pursuant to this subdivision shall begin on the first day of the week which the claimant was scheduled to claim and shall end on the last day of the week preceding the week during which the claimant does report in person to the division's office;

(4) Prior to the first week of a period of total or partial unemployment for which the claimant claims benefits he or she has been totally or partially unemployed for a waiting period of one week. No more than one waiting week will be required in any benefit year. During calendar year 2008 and each calendar year thereafter, the one-week waiting period shall become compensable once his or her remaining balance on the claim is equal to or less than the compensable amount for the waiting period. No week shall be counted as a week of total or partial unemployment for the purposes of this subsection unless it occurs within the benefit year which includes the week with respect to which the claimant claims benefits;

(5) The claimant has made a claim for benefits **within fourteen days from the last day of the week being claimed. The fourteen-day period may, for good cause, be extended to twenty-eight days;**

(6) The claimant has reported to an employment office to participate in a reemployment assessment and reemployment services as directed by the deputy or designated staff of an employment office, unless the deputy determines that good cause exists for the claimant's failure to participate in such reemployment assessment and reemployment services. For purposes of this section, "reemployment services" may include, but not be limited to, the following:

(a) Providing an orientation to employment office services;

(b) Providing job search assistance; and

(c) Providing labor market statistics or analysis;

Ineligibility under this subdivision shall begin on the first day of the week which the claimant was scheduled to report for the reemployment assessment or reemployment services and shall end on the last day of the week preceding the week during which the claimant does report in person to the employment office for such reemployment assessment or reemployment services;

[(6)**]** **(7)** The claimant is participating in reemployment services, such as job search assistance services, as directed by the deputy if the claimant has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the division, unless the deputy determines that:

(a) The individual has completed such reemployment services; or

(b) There is justifiable cause for the claimant's failure to participate in such reemployment services.

2. A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds he or she is or has been suspended by his or her most recent employer for misconduct connected with his or her work. Suspensions of four weeks or more shall be treated as discharges.

3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of section 288.034, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this law; except that:

(a) With respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) With respect to services performed in any capacity (other than instructional, research, or principal administrative capacity) for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform such services in the second of such academic years or terms;

(c) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits shall not be paid on the basis of such services to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performed such services in the period immediately before such vacation period or holiday recess, and there is reasonable assurance that such individual will perform such services immediately following such vacation period or holiday recess;

(d) With respect to services described in paragraphs (a) and (b) of this subdivision, benefits payable on the basis of services in any such capacity shall be denied as specified in paragraphs (a), (b), and (c) of this subdivision to any individual who performed such services at an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(2) If compensation is denied for any week pursuant to paragraph (b) or (d) of subdivision (1) of this subsection to any individual performing services at an educational institution in any capacity (other than instructional, research or principal administrative capacity), and such individual was not offered an opportunity to perform such services for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1) of this subsection.

4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work benefits for any week for which he or she is receiving or has received remuneration exceeding his or her weekly benefit amount or shared work benefit amount in the form of:

(a) Compensation for temporary partial disability pursuant to the workers' compensation law of any state or pursuant to a similar law of the United States;

(b) A governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such claimant to the extent that such payment is provided from funds provided by a base period or chargeable employer pursuant to a plan maintained or contributed to by such employer; but, except for such payments made pursuant to the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), the provisions of this paragraph shall not apply if the services performed for such employer by the claimant after the beginning of the base period (or remuneration for such services) do not affect eligibility for or increase the amount of such pension, retirement or retired pay, annuity or similar payment.

(2) If the remuneration referred to in this subsection is less than the benefits which would otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration, and, if such benefit is not a multiple of one dollar, such amount shall be lowered to the next multiple of one dollar.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a claimant has contributed in any way to the Social Security Act or the Railroad Retirement Act of 1974, or the corresponding provisions of prior law, no part of the payments received pursuant to such federal law shall be deductible from the amount of benefits received pursuant to this chapter.

5. A claimant shall be ineligible for waiting week credit or benefits for any week for which or a part of which he or she has received or is seeking unemployment benefits pursuant to an unemployment insurance law of another state or the United States; provided, that if it be finally determined that the claimant is not entitled to such unemployment benefits, such ineligibility shall not apply.

6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds that such claimant's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute in the factory, establishment or other premises in which such claimant is or was last employed. In the event the claimant secures other employment from which he or she is separated during the existence of the labor dispute, the claimant must have obtained bona fide employment as a permanent employee for at least the major part of each of two weeks in such subsequent employment to terminate his or her ineligibility. If, in any case, separate branches of work which are commonly conducted as separate businesses at separate premises are conducted in separate departments of the same

premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment or other premises. This subsection shall not apply if it is shown to the satisfaction of the deputy that:

(a) The claimant is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) The claimant does not belong to a grade or class of workers of which, immediately preceding the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) "Stoppage of work" as used in this subsection means a substantial diminution of the activities, production or services at the establishment, plant, factory or premises of the employing unit. This definition shall not apply to a strike where the employees in the bargaining unit who initiated the strike are participating in the strike. Such employees shall not be eligible for waiting week credit or benefits during the period when the strike is in effect, regardless of diminution, unless the employer has been found guilty of an unfair labor practice by the National Labor Relations Board or a federal court of law for an act or actions preceding or during the strike.

7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

8. Benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

9. The directors of the division of employment security and the division of workforce development shall submit to the governor, the speaker of the house of representatives, and the president pro tem of the senate no later than October 15, 2006, a report outlining their recommendations for how to improve work search verification and claimant reemployment activities. The recommendations shall include, but not limited to how to best utilize "greathires.org", and how to reduce the average duration of unemployment insurance claims. Each calendar year thereafter, the directors shall submit a report containing their recommendations on these issues by December thirty-first of each year.

288.042. WAR ON TERROR VETERANS, DEFINED — ELIGIBLE FOR BENEFITS — TIME PERIOD — PENALTY — OFFER OF SIMILAR WAGES — FUND — RULEMAKING AUTHORITY. — 1. For purposes of this section, a "war on terror veteran" is a Missouri resident who serves or has served in the military and to whom the following criteria apply:

(1) The person is or was a member of the **[**Missouri**]** national guard or a member of a United States armed forces reserves unit who was officially domiciled in the state of Missouri immediately prior to deployment;

(2) The person was deployed as part of his or her military unit at any time after September 11, 2001, and such deployment caused the person to be unable to continue working for his or her employer;

(3) The person was employed either part time or full time before deployment; and

(4) A Missouri court or United States district court located in Missouri has found that the person was discharged from or laid off from his or her nonmilitary employment during deployment or within thirty days after the completion of his or her deployment.

2. Notwithstanding any provisions of sections 288.010 to 288.500, any war on terror veteran shall be entitled to receive veterans' unemployment compensation benefits under this section. A war on terror veteran shall be entitled to a weekly benefit amount of eight percent of the wages paid to the war on terror veteran during that calendar quarter during which the war on terror veteran earned the highest amount within the five completed calendar quarters during which the war on terror veteran received wages immediately before deployment. The maximum amount of a weekly benefit amount shall be one thousand one hundred fifty-three dollars and sixty-four cents.

3. A war on terror veteran shall be entitled to a weekly benefit amount for twenty-six weeks. **[**The division may collect erroneously paid benefits in the manner provided in sections 288.160 and 288.170.**]** **The division of employment security shall pursue recovery of overpaid unemployment compensation benefits against any person receiving such overpaid benefits through billing, setoffs against state tax refunds, setoffs against federal tax refunds to the extent permitted by federal law, intercepts of lottery winnings under section 313.321, RSMo, and collection efforts as provided for in sections 288.160, 288.170, and 288.175.**

4. Any employer who is found in any Missouri court or United States district court located in Missouri to have terminated, demoted, or taken an adverse employment action against a war on terror veteran due to his or her absence while deployed shall be subject to an administrative penalty in the amount of thirty-five thousand dollars. The director of the division of employment security shall take judicial notice of judgments in suits brought under the Uniformed Service Employment and Reemployment Rights Act (38 U.S.C. 4301). Such judgments may be considered to have a res judicata effect on the director's determination. The administrative penalty shall be collectible in the manner provided in sections 288.160 and 288.170.

5. A war on terror veteran shall be considered to have been discharged from his or her employment if he or she is not offered the same wages, benefits, and similar work schedule upon his or her return after deployment.

6. There is hereby created in the state treasury the "War on Terror Unemployment Compensation Fund", which shall consist of money collected under this section and such other state funds appropriated by the general assembly. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the administration, including payment of benefits and refunds, of this section. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and money earned on such investments shall be credited to the fund.

7. The division of employment security may promulgate rules to enforce this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

288.070. CLAIMS FOR BENEFITS — PROCEDURE — PAYMENT PENDING APPEAL. — 1. All claims shall be made in accordance with such regulations as the division may prescribe; except that such regulations shall not require the filing of a claim for benefits by the claimant in person for a week of unemployment occurring immediately prior to the claimant's reemployment, but claims in such cases may be made by mail, or otherwise if authorized by regulation. Notice of each initial claim filed by an insured worker which establishes the beginning of such worker's benefit year shall be promptly mailed by the division to each base period employer of such individual**, except notice of an initial claim shall not be mailed to any contributing base period employer which paid such individual gross wages in the amount of four hundred dollars or less during such individual's base period,** and to the last employing unit whose name is furnished by the individual when such individual files such claim. In similar manner, a notice of each renewed claim filed by an insured worker during a benefit year after a period in such year during which the insured worker was employed shall be given to the last employing unit whose name is furnished by the individual when the individual files such renewed claim or to any other base period or subsequent employer of the worker who has requested such a notice. Any such base period employer or any employing unit, which employed the claimant since the beginning of the base period, who within ten calendar days after the mailing of notice of the initial claim or a renewed claim to the employer or employing unit's last known address files a written protest against the allowance of benefits, and any employing unit from whom the claimant was separated during a week **[**of continued claim**] claimed** other than a week in which an initial or renewed claim is effective, shall be deemed an interested party to any determination allowing benefits during the benefit year until such time as the issue or issues raised by the protest are resolved by a determination or decision which has become final.

2. If the last employer or any base period employer files a written protest against the allowance of benefits based upon the claimant's refusal to accept suitable work when offered the claimant, either through the division or directly by such last or base period employer, and such protest is filed within ten calendar days of the claimant's refusal of work, such employer shall be deemed an interested party to any determination concerning the claimant's refusal of work until such time as the issue or issues raised by the protest are resolved by a determination or decision which has become final.

3. Any base period employer or any employing unit, which employed the claimant since the beginning of the base period, who files a written protest against the allowance of benefits based upon the claimant not being able to work or available for work shall be deemed an interested party to any determination concerning claimant's ability to work or availability for work until such time as the issue or issues raised by the protest are resolved by a determination or decision which has become final.

[2.**] 4.** A deputy shall promptly examine each initial claim and make a determination of the claimant's status as an insured worker. Each such determination shall be based on a written statement showing the amount of wages for insured work paid to the claimant by each employer during the claimant's base period and shall include a finding as to whether such wages meet the requirements for the claimant to be an insured worker, and, if so, the first day of the claimant's benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits which may be payable to the claimant for weeks of unemployment in the claimant's benefit year. The deputy shall in respect to all claims for benefits thereafter filed by such individual in the claimant's benefit year make a written determination as to whether and in what amount the claimant is entitled to benefits for the week or weeks with respect to which the determination is made. Whenever claims involve complex questions of law or fact, the deputy, with the approval of the director, may refer such claims to the appeals tribunal, without making a determination, for a fair hearing and decision as provided in section 288.190.

[3.**] 5.** The deputy shall, in writing, promptly notify the claimant of such deputy's determination on an initial claim, including the reason therefor, and a copy of the written statement as provided in subsection **[**2**] 4** of this section. The deputy shall promptly notify the

claimant and all other interested parties of such deputy's determination on any claim for benefits and shall give the reason therefor; except that, where a determination on a later claim for benefits in a benefit year is the same as the determination on a preceding claim, no additional notice shall be given. A determination shall be final, when unappealed, in respect to any claim to which it applies except that an appeal from a determination on a claim for benefits shall be considered as an appeal from all later claims to which the same determination applies. The deputy may, however, not later than one year following the end of a benefit year, for good cause, reconsider any determination on any claim and shall promptly notify the claimant and other interested parties of such deputy's redetermination and the reasons therefor. Whenever the deputy shall have notified any interested employer of the denial of benefits to a claimant for any week or weeks and shall thereafter allow benefits to such claimant for a subsequent week or weeks, the deputy shall notify such interested employer of the beginning date of the allowance of benefits for such subsequent period.

[4.**]** **6.** Unless the claimant or any interested party within thirty calendar days after notice of such determination is either delivered in person or mailed to the last known address of such claimant or interested party files an appeal from such determination, it shall be final. If, pursuant to a determination or redetermination, benefits are payable in any amount or in respect to any week as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal.

[5.**]** **7.** Benefits shall be paid promptly in accordance with a determination or redetermination pursuant to this section, or the decision of an appeals tribunal, the labor and industrial relations commission of Missouri or a reviewing court upon the issuance of such determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review as provided in this section, or section 288.190, 288.200, or 288.210, as the case may be, or the pendency of any such application, appeal, or petition) unless and until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modified or reversed redetermination or decision.

[6.**]** **8.** Benefits paid during the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review or during the pendency of any such application, appeal, or petition shall be considered as having been due and payable regardless of any redetermination or decision unless the modifying or reversing redetermination or decision establishes that the claimant willfully failed to disclose or falsified any fact which would have disqualified the claimant or rendered the claimant ineligible for such benefits as contemplated in subsection 9 of section 288.380.

[7.**]** **9.** Benefits paid during the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review or during the pendency of any such application, appeal, or petition which would not have been payable under a redetermination or decision which becomes final shall not be chargeable to any employer. Beginning with benefits paid on and after January 1, 1998, the provisions of this subsection shall not apply to employers who have elected to make payments in lieu of contributions pursuant to subsection 3 of section 288.090.

[8.**]** **10.** The ten-day period mentioned in **[**subsection**]** **subsections** 1 **and 2** of this section and the thirty-day period mentioned in subsection **[**4**]** **6** of this section may, for good cause, be extended.

11. Any notice of claim or notice of determination required to be mailed by the division to an employer or claimant under this section may be transmitted electronically by the division to any employer or claimant requesting such method of delivery. The date the division transmits such notice of claim or notice of determination shall be deemed the date of mailing for purposes of filing a protest to the notice or claim or filing an appeal concerning a notice of determination.

288.131. UNEMPLOYMENT AUTOMATION SURCHARGE AUTHORIZED, AMOUNT. — For calendar years 2009, 2010, and 2011, each employer that is liable for contributions under this chapter, except employers with a contribution rate equal to zero, shall pay an annual unemployment automation surcharge in an amount equal to five one-hundredths of one percent of such employer's total taxable wages for the twelve-month period ending the preceding June thirteenth. However, the division may reduce the foregoing percentage to ensure that the total amount of surcharge due from all employers under this subsection shall not exceed thirteen million dollars annually. Each employer liable to pay such surcharge shall be notified of the amount due under this subsection by March thirty-first of each year and such amount shall be considered delinquent thirty days thereafter. Delinquent unemployment automation surcharge amounts may be collected in the manner provided under sections 288.160 and 288.170. All moneys collected under this subsection shall be deposited in the unemployment automation fund established in section 288.312.

2. For calendar years 2009, 2010, and 2011, the otherwise applicable unemployment contribution rate of each employer liable for contributions under this chapter shall be reduced by five one-hundredths of one percent, except such contribution rate shall not be less than zero.

288.250. RECORDS CONFIDENTIAL — PRIVILEGED COMMUNICATIONS — VIOLATION, PENALTY. — 1. Information obtained from any employing unit or individual pursuant to the administration of this law, shall be held confidential and shall not be published**, further disclosed,** or be open to public inspection **[**(other than to public employees in the performance of their public duties, including, but not limited to, the division of child support enforcement, other child support agencies of the federal government or other states as provided for under chapter 454, RSMo, or federal statutes)**]** in any manner revealing the individual's or employing unit's identity, but any claimant or employing unit or their authorized representative shall be supplied with information from the division's records to the extent necessary for the proper preparation and presentation of any claim for unemployment compensation benefits or protest of employer liability. Further, upon receipt of a written request from a claimant or his or her authorized representative, the division shall supply information previously submitted to the division by the claimant, the claimant's wage history and the claimant's benefit payment history. In addition, upon receipt of a written request from an authorized representative of an employing unit, the division shall supply information previously submitted to the division by the employing unit, and information concerning the payment of benefits from the employer's account and the unemployment compensation fund, including amounts paid to specific claimants. **A state or federal official or agency may receive disclosures to the extent required by federal law. In the division's discretion, any other party may receive disclosures to the extent authorized by state and federal law.** Any information obtained by the division in the administration of this law shall be privileged and no individual or type of organization shall be held liable for slander or libel on account of any such information.

2. Any person who intentionally discloses or otherwise fails to protect confidential information in violation of this section shall be guilty of a class A misdemeanor. For a second or subsequent violation, the person shall be guilty of a class D felony.

288.312. UNEMPLOYMENT AUTOMATION FUND CREATED, USE OF MONEYS. — 1. There is hereby created in the state treasury the "Unemployment Automation Fund", with shall consist of money collected under subsection 1 of section 288.131, and such other state funds appropriated by the general assembly. The state treasurer shall be custodian of the fund and may approve disbursements from the fund in accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the purpose of providing automated systems, and the payment of associated costs, to improve the administration of the state's unemployment insurance program. Notwithstanding the

provisions of section 33.080, RSMo, to the contrary, all moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and money earned on such investments shall be credited to the fund.

2. The unemployment automation fund shall not be used in whole or in part for any purpose or in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this chapter, or cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

290.505. OVERTIME COMPENSATION, APPLICABLE NUMBER OF HOURS, EXCEPTIONS. — 1. No employer shall employ any of his employees for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

2. Employees of an amusement or recreation business that meets the criteria set out in 29 U.S.C. 213(a) (3) must be paid one and one-half times their regular compensation for any hours worked in excess of fifty-two hours in any one-week period.

3. With the exception of employees described in subsection (2), the overtime requirements of subsection (1) shall not apply to employees who are exempt from federal minimum wage or overtime requirements **[**pursuant to 29 U.S.C. §§ 213(a)-(b)**] including, but not limited to, the exemptions or hour calculation formulas specified in 29 U.S.C. Sections 207 and 213, and any regulations promulgated thereunder.**

4. Except as may be otherwise provided under sections 290.500 to 290.530, this section shall be interpreted in accordance with the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended, and the Portal to Portal Act, 29 U.S.C. Section 251, et seq., as amended, and any regulations promulgated thereunder.

290.523. RULEMAKING AUTHORITY. — The department may, in accordance with chapter 536, RSMo, promulgate such rules and regulations as are necessary for the enforcement and administration of sections 290.500 to 290.530. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

SECTION B. EFFECTIVE DATE. — Sections 178.585, 288.040, 288.042, 288.070, and 288.250 of this act shall become effective October 1, 2008.

SECTION C. EMERGENCY CLAUSE. — Because of the need to preserve federal standards relating to overtime payments to employees, section 290.505 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section 290.505 of section A of this act shall be in full force and effect upon its passage and approval.

Approved June 25, 2008

HB 2047 [SCS HB 2047]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding certain cities' power to grade streets and increases the rate of a special road rock fund tax in certain counties

AN ACT to repeal sections 88.917 and 231.444, RSMo, and to enact in lieu thereof two new sections relating to maintenance of roadways.

SECTION
A. Enacting clause.
88.917. Street grading (cities, 300,000 or over).
231.444. County road tax — Carter, Holt, Knox, Schuyler, Scotland and Worth counties — special road rock fund.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 88.917 and 231.444, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 88.917 and 231.444, to read as follows:

88.917. STREET GRADING (CITIES, 300,000 OR OVER). — Every city now having or which may at any time hereafter have a population of three hundred thousand inhabitants or over shall have at all times the power to establish the grade and change the grade already established, of any street, alley, avenue, public highway or public place, or any part thereof, as often as it may be deemed best for the public interest, and to cause the same or any part thereof to be graded to the established grade or to any change thereof**[**;**]**. Provided, however, that when a change is proposed to be made in the grade of any street, alley, avenue, public highway or public place, or any part thereof, which has once been established, the **[**two houses of legislation of such**]** city shall by **[**resolution**]** **ordinance** declare the work of improvement to be necessary, and cause such **[**resolution**]** **ordinance**, or the substance thereof, to be published in the newspaper doing the city printing, for ten days, Sundays included**[**; and**]**. Unless the resident owners of the city who shall own the majority in front feet of all the lands belonging to such residents fronting on the street, alley, avenue, public highway, public place, or part thereof to be improved, **[**shall,**]** within thirty days after the first day of the publication of such **[**resolution**]** **ordinance**, file with the city register their remonstrance against the proposed change, then the **[**two houses of legislation of such city shall have power by**]** ordinance to cause the proposed change to be made**[**;**]** **shall become effective.** Provided further, however, that when the charter of any such city shall require that such **[**resolution or**]** ordinance shall, before being passed, be recommended by a board of public improvements, or other authority of such city, then the same shall, before being passed, be recommended as therein required. If the remonstrance of the resident property owners above mentioned shall be filed with the city register, as herein provided, the **[**power of the two houses of legislation**]** **ordinance** to make the proposed change in the grade of such street, alley, avenue, public highway or public place, or any part thereof, shall **[**cease**]** **not become effective** until a sufficient number of the persons so remonstrating or their grantees shall, in writing, withdraw their names or the property represented by them from such remonstrance, so that said remonstrance shall cease to represent a majority of the resident owners as above provided**[**, when the two houses of legislation may again proceed in the manner above mentioned**]**.

231.444. COUNTY ROAD TAX — CARTER, HOLT, KNOX, SCHUYLER, SCOTLAND AND WORTH COUNTIES — SPECIAL ROAD ROCK FUND. — 1. In addition to other levies authorized

by law, the governing body of any county of the third classification without a township form of government having a population **[**in excess of four thousand two hundred and less than six thousand**] of less than six thousand inhabitants** according to the most recent decennial census **[**or any county of the third classification without a township form of government and with more than two thousand three hundred but fewer than two thousand four hundred inhabitants**]** may by ordinance levy and impose a tax pursuant to this section which shall not exceed the rate of **[**twenty-five cents**] one-dollar** on each acre of real property in the county which is classified as agricultural and horticultural property pursuant to section 137.016, RSMo.

2. The proceeds of the tax authorized pursuant to this section shall be collected by the county collector and remitted to the county treasurer who shall deposit such proceeds in a special fund to be known as the "Special Road Rock Fund". All moneys in the special road rock fund shall be appropriated by the county governing body for the sole purpose of purchasing road rock to be placed on county roads within the boundaries of the county.

3. The ordinance levying and imposing a tax pursuant to subsection 1 of this section shall not be effective unless the county governing body submits to the qualified voters of the county a proposal to authorize the county governing body to levy and impose the tax at an election permitted pursuant to section 115.123, RSMo. The ballot of submission proposing the tax shall be in substantially the following form:

Shall the county of ..... (county's name) be authorized to levy and impose a tax on all real property in the county which is classified as agricultural or horticultural property at a rate not to exceed ..... (rate of tax) cents per acre with all the proceeds of the tax to be placed in the "Special Road Rock Fund" and used solely for the purpose of purchasing road rock to be placed on county roads within the boundaries of the county?

[ ] YES [ ] NO

4. If a majority of the qualified voters of the county voting on the proposal vote "YES", then the governing body of the county may by ordinance levy and impose the tax authorized by this section in an amount not to exceed the rate proposed in the ballot of submission. If a majority of the qualified voters of the county voting on the proposal vote "NO", then the governing body of the county shall not levy and impose such tax. Nothing in this section shall prohibit a rejected proposal from being resubmitted to the qualified voters of the county at an election permitted pursuant to section 115.123, RSMo.

Approved June 19, 2008

HB 2048 [SCS HCS HB 2048]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Establishes the Textbook Transparency Act

AN ACT to amend chapter 173, RSMo, by adding thereto one new section relating to college textbooks.

SECTION

A. Enacting clause.

173.955. Citation of law — definitions — information to be provided to faculty, when — use of financial aid for purchase of textbooks, when.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 173, RSMo, is amended by adding thereto one new section, to be known as section 173.955, to read as follows:

173.955. CITATION OF LAW — DEFINITIONS — INFORMATION TO BE PROVIDED TO FACULTY, WHEN — USE OF FINANCIAL AID FOR PURCHASE OF TEXTBOOKS, WHEN. — 1. The provisions of this section shall be known as the "Textbook Transparency Act". For purposes of this section, the following terms mean:

(1) "Adopter", any faculty member or academic department at an approved institution of higher education responsible for considering and choosing course materials to be utilized in connection with the accredited courses taught at the approved institution of higher education;

(2) "Approved institution of higher education", an educational institution located in Missouri which:

(a) Is directly controlled or administered by a public agency or political subdivision;

(b) Receives appropriations directly or indirectly from the general assembly for operating expenses;

(c) Provides a postsecondary course of instruction at least six months in length leading to or directly creditable toward a degree or certificate;

(d) Meets the standards for accreditation as determined by either the North Central Association of Colleges and Secondary Schools, or if a public junior college created under the provisions of sections 178.370 to 178.400, RSMo, meets the standards established by the coordinating board for higher education for such public junior colleges, or by other accrediting bodies recognized by the United States Office of Education or by utilizing accreditation standards applicable to the institution as established by the coordinating board for higher education;

(e) Does not discriminate in the hiring of administrators, faculty and staff or in the admission of students on the basis of race, color, religion, sex, or national origin and is otherwise in compliance with the federal Civil Rights Acts of 1964 and 1968 and executive orders issued pursuant thereto; and

(f) Permits faculty members to select textbooks without influence or pressure by any religious or sectarian source;

(3) "College textbook", a textbook or a set of textbooks used for a course of postsecondary education at an approved public institution of higher education;

(4) "Integrated textbook", a college textbook that:

(a) Is combined with materials developed by a third party and that, by third-party contractual agreement, may not be offered by publishers separately from the college textbook with which the materials are combined; or

(b) Includes functionally interdependent course materials designed to be used solely as a single unit and whose separation would substantially degrade the academic content so that it would not be usable to the student;

(5) "Products", all versions of a college textbook or set of college textbooks, except custom textbooks or special editions of textbooks, available in the subject area for which a prospective purchaser is teaching a course, including supplemental material, both when sold together or separately from a college textbook;

(6) "Supplemental material", educational material that may accompany a college textbook, including printed materials, computer disks, website access, and electronically distributed materials, that is neither:

(a) Bound by third-party contractual agreements to be sold in an integrated textbook; nor

(b) A component of an integrated textbook.

2. Each publisher of college textbooks shall provide, upon request, the following information to faculty members or adopters at an approved institution of higher

education, whenever the publisher provides a faculty member or adopter with information about the publisher's products:

(1) The price at which the publisher would make the products available to the campus bookstore;

(2) The substantial content revisions for such products made between a current textbook edition and the previous edition, if any;

(3) The copyright dates of all previous editions of such college textbook in the preceding ten years, if any; and

(4) Whether the products are available in any other format, including paperback and unbound, and the price at which the publisher would make the products in the other formats available to the campus bookstore.

3. A publisher that sells a college textbook and any supplemental material accompanying such college textbook as a single bundle shall also make available the college textbook and each supplemental material as separate and unbundled items, each separately priced.

4. Where existing technology and contracts make it feasible, an approved public institution of higher education shall develop a policy that permits students to use financial aid that has not been disbursed for tuition or fees to purchase required textbooks for courses taught at the institution at stores on the campus of the institution.

5. To the extent practicable, an approved institution of higher education shall encourage faculty members or adopters to place their initial orders for college textbooks with sufficient time for the campus bookstore to factor such information into student buyback, research the availability of the course material, and exchange, when appropriate, relevant information with faculty to support effective use of course materials such as bundles and to promote cost efficiencies for students.

Approved June 25, 2008

HB 2058 [SS SCS HCS HB 2058]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Changes the laws regarding tax incentives for business development

AN ACT to repeal sections 32.057, 32.105, 67.1501, 67.1545, 99.820, 105.485, 135.305, 135.348, 135.800, 135.805, 135.815, 135.967, 137.115, 260.285, 348.436, 353.150, 447.708, 620.1878, and 620.1881, RSMo, section 99.825 as enacted by senate committee substitute for house committee substitute for house bill no. 741, ninety-fourth general assembly, first regular session, and section 99.825 as enacted by conference committee substitute for house committee substitute for senate bill no. 1, eighty-ninth general assembly, second extraordinary session, and to enact in lieu thereof with twenty-three new sections relating to tax incentives for business development.

SECTION

A. Enacting clause.
32.057. Confidentiality of tax returns and department records — exceptions — penalty for violation.
32.105. Definitions.
67.1501. Funding of district.
67.1545. Sales and use tax authorized in certain districts — procedure to adopt, ballot language, imposition and collection by retailers — penalties for violations — deposit into trust fund, use — repeal procedure.
99.820. Municipalities' powers and duties — commission appointment and powers — public disclosure requirements — officials' conflict of interest, prohibited.

99.825. Adoption of ordinance for redevelopment, public hearing required — objection procedure — hearing and notices not required, when — restrictions on certain projects.
99.825. Adoption of ordinance for redevelopment, public hearing required — objection procedure — hearing and notices not required, when — restrictions on certain projects.
105.485. Financial interest statements — form — contents — political subdivisions, compliance.
105.1270. No conflict of interest for state — authorized tax credits, abatements, exemptions, or loans, when.
135.305. Eligibility — amount of tax credit.
135.682. Letter rulings to be issued, procedure — letter rulings closed records.
135.800. Citation — definitions.
135.803. Ineligibility based on conflict of interests when.
135.805. Certain information to be submitted annually, who, time period — due date of reporting requirements — requirements to apply to certain recipients, when — applicant in compliance, when, written notification, when, records available for review — effective date — names of recipients to be made public.
135.815. Verification of applicant's tax payment status, when, effect of delinquency — employment of unauthorized aliens, effect of.
135.967. Tax credit allowed, duration — prohibition on receiving other tax credits — limitations on issuance of tax credits — cap — eligibility of certain expansions — employee calculations — computation of credit — flow-through tax treatments — credits may be claimed, when — certificates — refunds — verification procedures.
137.115. Real and personal property, assessment — maintenance plan — assessor may mail forms for personal property — classes of property, assessment — physical inspection required, when, procedure.
144.057. All tangible personal property on U.S. munitions list, exempt from state and local sales and use tax.
348.436. Expiration date.
353.150. Borrowing of money and giving of security by corporation.
447.708. Tax credits, criteria, conditions — definitions.
620.050. Council created, members, appointment — registration fee — fund established, use of moneys — council duties — rulemaking authority.
620.1878. Definitions.
620.1881. Project notice of intent, department to respond with a proposal or a rejection — benefits available — effect on withholding tax — projects eligible for benefits — annual report — cap on tax credits — allocation of tax credits.
135.348. Tax credit for sponsorship and mentoring program.
260.285. Manufacturer recycling flexible cellulose casing eligible for tax credit — claim procedure — fraudulent claim, penalty.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 32.057, 32.105, 67.1501, 67.1545, 99.820, 105.485, 135.305, 135.348, 135.800, 135.805, 135.815, 135.967, 137.115, 260.285, 348.436, 353.150, 447.708, 620.1878, and 620.1881, RSMo, section 99.825 as enacted by senate committee substitute for house committee substitute for house bill no. 741, ninety-fourth general assembly, first regular session, and section 99.825 as enacted by conference committee substitute for house committee substitute for senate bill no. 1, eighty-ninth general assembly, second extraordinary session, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 32.057, 32.105, 67.1501, 67.1545, 99.820, 99.825, 105.485, 105.1270, 135.305, 135.682, 135.800, 135.803, 135.805, 135.815, 135.967, 137.115, 144.057, 348.436, 353.150, 447.708, 620.050, 620.1878, and 620.1881, to read as follows:

32.057. CONFIDENTIALITY OF TAX RETURNS AND DEPARTMENT RECORDS — EXCEPTIONS — PENALTY FOR VIOLATION. — 1. Except as otherwise specifically provided by law, it shall be unlawful for the director of revenue, any officer, employee, agent or deputy or former director, officer, employee, agent or deputy of the department of revenue, any person engaged or retained by the department of revenue on an independent contract basis, any person to whom authorized or unauthorized disclosure is made by the department of revenue, or any person who lawfully or unlawfully inspects any report or return filed with the department of revenue or to whom a copy, an abstract or a portion of any report or return is furnished by the department of revenue to make known in any manner, to permit the inspection or use of or to divulge to anyone any information relative to any such report or return, any information obtained by an investigation conducted by the department in the discharge of official duty, or any

information received by the director in cooperation with the United States or other states in the enforcement of the revenue laws of this state. Such confidential information is limited to information received by the department in connection with the administration of the tax laws of this state.

2. Nothing in this section shall be construed to prohibit:

(1) The disclosure of information, returns, reports, or facts shown thereby, as described in subsection 1 of this section, by any officer, clerk or other employee of the department of revenue charged with the custody of such information:

(a) To a taxpayer or the taxpayer's duly authorized representative under regulations which the director of revenue may prescribe;

(b) In any action or proceeding, civil, criminal or mixed, brought to enforce the revenue laws of this state;

(c) To the state auditor or the auditor's duly authorized employees as required by subsection 4 of this section;

(d) To any city officer designated by ordinance of a city within this state to collect a city earnings tax, upon written request of such officer, which request states that the request is made for the purpose of determining or enforcing compliance with such city earnings tax ordinance and provided that such information disclosed shall be limited to that sufficient to identify the taxpayer, and further provided that in no event shall any information be disclosed that will result in the department of revenue being denied such information by the United States or any other state. The city officer requesting the identity of taxpayers filing state returns but not paying city earnings tax shall furnish to the director of revenue a list of taxpayers paying such earnings tax, and the director shall compare the list submitted with the director's records and return to such city official the name and address of any taxpayer who is a resident of such city who has filed a state tax return but who does not appear on the list furnished by such city. The director of revenue may set a fee to reimburse the department for the costs reasonably incurred in providing this information;

(e) To any employee of any county or other political subdivision imposing a sales tax which is administered by the state department of revenue whose office is authorized by the governing body of the county or other political subdivision to receive any and all records of the state director of revenue pertaining to the administration, collection and enforcement of its sales tax. The request for sales tax records and reports shall include a description of the type of report requested, the media form including electronic transfer, computer tape or disk, or printed form, and the frequency desired. The request shall be made by annual written application and shall be filed with the director of revenue. The director of revenue may set a fee to reimburse the department for the costs reasonably incurred in providing this information. Such city or county or any employee thereof shall be subject to the same standards for confidentiality as required for the department of revenue in using the information contained in the reports;

(f) To the director of the department of economic development or the director's duly authorized employees in discharging the director's official duties to certify taxpayers eligibility to claim state tax credits as prescribed by statutes;

(g) To any employee of any political subdivision, such records of the director of revenue pertaining to the administration, collection and enforcement of the tax imposed in chapter 149, RSMo, as are necessary for ensuring compliance with any cigarette or tobacco tax imposed by such political subdivision. The request for such records shall be made in writing to the director of revenue, and shall include a description of the type of information requested and the desired frequency. The director of revenue may charge a fee to reimburse the department for costs reasonably incurred in providing such information;

(2) The publication by the director of revenue or of the state auditor in the audit reports relating to the department of revenue of:

(a) Statistics, statements or explanations so classified as to prevent the identification of any taxpayer or of any particular reports or returns and the items thereof;

(b) The names and addresses without any additional information of persons who filed returns and of persons whose tax refund checks have been returned undelivered by the United States Post Office;

(3) The director of revenue from permitting the Secretary of the Treasury of the United States or the Secretary's delegates, the proper officer of any state of the United States imposing a tax equivalent to any of the taxes administered by the department of revenue of the state of Missouri or the appropriate representative of the multistate tax commission to inspect any return or report required by the respective tax provision of this state, or may furnish to such officer an abstract of the return or report or supply the officer with information contained in the return or disclosed by the report of any authorized investigation. Such permission, however, shall be granted on condition that the corresponding revenue statute of the United States or of such other state, as the case may be, grants substantially similar privileges to the director of revenue and on further condition that such corresponding statute gives confidential status to the material with which it is concerned;

(4) The disclosure of information, returns, reports, or facts shown thereby, by any person on behalf of the director of revenue, in any action or proceeding to which the director is a party or on behalf of any party to any action or proceeding pursuant to the revenue laws of this state when such information is directly involved in the action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such information as is pertinent to the action or proceeding and no more;

(5) The disclosure of information, returns, reports, or facts shown thereby, by any person to a state or federal prosecuting official, including, but not limited to, the state and federal attorneys general, or the official's designees involved in any criminal, quasi-criminal, or civil investigation, action or proceeding pursuant to the laws of this state or of the United States when such information is pertinent to an investigation, action or proceeding involving the administration of the revenue laws or duties of public office or employment connected therewith;

(6) Any school district from obtaining the aggregate amount of the financial institution tax paid pursuant to chapter 148, RSMo, by financial institutions located partially or exclusively within the school district's boundaries, provided that the school district request such disclosure in writing to the department of revenue;

(7) The disclosure of records which identify all companies licensed by this state pursuant to the provisions of subsections 1 and 2 of section 149.035, RSMo. The director of revenue may charge a fee to reimburse the department for the costs reasonably incurred in providing such records;

(8) The disclosure to the commissioner of administration pursuant to section 34.040, RSMo, of a list of vendors and their affiliates who meet the conditions of section 144.635, RSMo, but refuse to collect the use tax levied pursuant to chapter 144, RSMo, on their sales delivered to this state**;**

(9) The disclosure to the public of any information, or facts shown thereby regarding the claiming of a state tax credit by a member of the Missouri general assembly or any state-wide elected public official.

3. Any person violating any provision of subsection 1 or 2 of this section shall, upon conviction, be guilty of a class D felony.

4. The state auditor or the auditor's duly authorized employees who have taken the oath of confidentiality required by section 29.070, RSMo, shall have the right to inspect any report or return filed with the department of revenue if such inspection is related to and for the purpose of auditing the department of revenue; except that, the state auditor or the auditor's duly authorized employees shall have no greater right of access to, use and publication of information, audit and related activities with respect to income tax information obtained by the department of revenue pursuant to chapter 143, RSMo, or federal statute than specifically exists pursuant to the laws of the United States and of the income tax laws of the state of Missouri.

32.105. DEFINITIONS. — As used in sections 32.100 to 32.125, the following terms mean:

(1) "Affordable housing assistance activities", money, real or personal property, or professional services expended or devoted to the construction, or rehabilitation of affordable housing units;

(2) "Affordable housing unit", a residential unit generally occupied by persons and families with incomes at or below the levels described in this subdivision and bearing a cost to the occupant no greater than thirty percent of the maximum eligible household income for the affordable housing unit. In the case of owner-occupied units, the cost to the occupant shall be considered the amount of the gross monthly mortgage payment, including casualty insurance, mortgage insurance, and taxes. In the case of rental units, the cost to the occupant shall be considered the amount of the gross rent. The cost to the occupant shall include the cost of any utilities, other than telephone. If any utilities are paid directly by the occupant, the maximum cost that may be paid by the occupant is to be reduced by a utility allowance prescribed by the commission. Persons or families are eligible occupants of affordable housing units if the household combined, adjusted gross income as defined by the commission is equal to or less than the following percentages of the median family income for the geographic area in which the residential unit is located, or the median family income for the state of Missouri, whichever is larger; ("geographic area" means the metropolitan area or county designated as an area by the federal Department of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, for purposes of determining fair market rental rates):

Size of Household	Percent of State or Geographic Area Family Median Income
One Person	35%
Two Persons	40%
Three Persons	45%
Four Persons	50%
Five Persons	54%
Six Persons	58%
Seven Persons	62%
Eight Persons	66%

(3) "Business firm", person, firm, a partner in a firm, corporation or a shareholder in an S corporation doing business in the state of Missouri and subject to the state income tax imposed by the provisions of chapter 143, RSMo, including any charitable organization that is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the state income tax imposed under such chapter, or a corporation subject to the annual corporation franchise tax imposed by the provisions of chapter 147, RSMo, or an insurance company paying an annual tax on its gross premium receipts in this state, or other financial institution paying taxes to the state of Missouri or any political subdivision of this state pursuant to the provisions of chapter 148, RSMo, or an express company which pays an annual tax on its gross receipts in this state;

(4) "Commission", the Missouri housing development commission;

(5) "Community services", any type of counseling and advice, emergency assistance or medical care furnished to individuals or groups in the state of Missouri or transportation services at below-cost rates as provided in sections 208.250 to 208.275, RSMo;

(6) "Crime prevention", any activity which aids in the reduction of crime in the state of Missouri;

(7) "Defense industry contractor", a person, corporation or other entity which will be or has been negatively impacted as a result of its status as a prime contractor of the Department of Defense or as a second or third tier contractor. A "second tier contractor" means a person, corporation or other entity which contracts to perform manufacturing, maintenance or repair services for a prime contractor of the Department of Defense, and a "third tier contractor" means

a person, corporation or other entity which contracts with a person, corporation or other entity which contracts with a prime contractor of the Department of Defense;

(8) "Doing business", among other methods of doing business in the state of Missouri, a partner in a firm or a shareholder in an S corporation shall be deemed to be doing business in the state of Missouri if such firm or S corporation, as the case may be, is doing business in the state of Missouri;

(9) "Economic development", the acquisition, renovation, improvement, or the furnishing or equipping of existing buildings and real estate in distressed or blighted areas of the state when such acquisition, renovation, improvement, or the furnishing or equipping of the business development projects will result in the creation or retention of jobs within the state; or, until June 30, 1996, a defense conversion pilot project located in a standard metropolitan statistical area which contains a city with a population of at least three hundred fifty thousand inhabitants, which will assist Missouri-based defense industry contractors in their conversion from predominately defense-related contracting to nondefense-oriented manufacturing. Only neighborhood organizations, as defined in subdivision (13) of this section, may apply to conduct economic development projects. Prior to the approval of an economic development project, the neighborhood organization shall enter into a contractual agreement with the department of economic development. Credits approved for economic development projects may not exceed **[**four**]** **six** million dollars from within any one fiscal year's allocation**[**, except that for fiscal years 2005, 2006, and 2007 credits approved for economic development projects shall not exceed six million dollars**]**. Neighborhood assistance program tax credits for economic development projects and affordable housing assistance as defined in section 32.111 may be transferred, sold or assigned by a notarized endorsement thereof naming the transferee;

(10) "Education", any type of scholastic instruction or scholarship assistance to an individual who resides in the state of Missouri that enables the individual to prepare himself or herself for better opportunities or community awareness activities rendered by a statewide organization established for the purpose of archeological education and preservation;

(11) "Homeless assistance pilot project", the program established pursuant to section 32.117;

(12) "Job training", any type of instruction to an individual who resides in the state of Missouri that enables the individual to acquire vocational skills so that the individual can become employable or be able to seek a higher grade of employment;

(13) "Neighborhood organization", any organization performing community services or economic development activities in the state of Missouri and:

(a) Holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation pursuant to the provisions of the Internal Revenue Code; or

(b) Incorporated in the state of Missouri as a not-for-profit corporation pursuant to the provisions of chapter 355, RSMo; or

(c) Designated as a community development corporation by the United States government pursuant to the provisions of Title VII of the Economic Opportunity Act of 1964;

(14) "Physical revitalization", furnishing financial assistance, labor, material, or technical advice to aid in the physical improvement or rehabilitation of any part or all of a neighborhood area;

(15) "S corporation", a corporation described in Section 1361(a)(1) of the United States Internal Revenue Code and not subject to the taxes imposed by section 143.071, RSMo, by reason of section 143.471, RSMo;

(16) "Workfare renovation project", any project initiated pursuant to sections 215.340 to 215.355, RSMo.

67.1501. FUNDING OF DISTRICT. — 1. A district may use any one or more of the assessments, taxes, or other funding methods specifically authorized pursuant to sections 67.1401

to 67.1571 to provide funds to accomplish any power, duty or purpose of the district**[**; provided, however, no district which is located in any city not within a county and which includes any real property that is also included in a special business district established pursuant to sections 71.790 to 71.808, RSMo, prior to the establishment of the district pursuant to sections 67.1401 to 67.1571 shall have the authority to impose any such tax or assessment pursuant to sections 67.1401 to 67.1571 until such time as all taxes or special assessments imposed pursuant to sections 71.790 to 71.808, RSMo, on any real property or on any business located in such special business district or on any business or individual doing business in such special business district have been repealed in accordance with this subsection. The governing body of a special business district which includes real property located in a district established pursuant to sections 67.1401 to 67.1571 shall have the power to repeal all taxes and assessments imposed pursuant to sections 71.790 to 71.808, RSMo, and such power may be exercised by the adoption of a resolution by the governing body of such special business district. Upon the adoption of such resolution such special business district shall no longer have the power to impose any tax or special assessment pursuant to sections 71.790 to 71.808, RSMo, until such time as the district or districts established pursuant to sections 67.1401 to 67.1571 which include any real property that is also included in such special business district have been terminated or have expired pursuant to sections 67.1401 to 67.1571**]**.

2. A district may establish different classes of real property within the district for purposes of special assessments. The levy rate for special assessments may vary for each class or subclass based on the level of benefit derived from services or improvements funded, provided or caused to be provided by the district.

3. Notwithstanding anything in sections 67.1401 to 67.1571 to the contrary, any district which is not a political subdivision shall have no power to levy any tax but shall have the power to levy special assessments in accordance with section 67.1521.

67.1545. SALES AND USE TAX AUTHORIZED IN CERTAIN DISTRICTS — PROCEDURE TO ADOPT, BALLOT LANGUAGE, IMPOSITION AND COLLECTION BY RETAILERS — PENALTIES FOR VIOLATIONS — DEPOSIT INTO TRUST FUND, USE — REPEAL PROCEDURE. — 1. Any district formed as a political subdivision may impose by resolution a district sales and use tax on all retail sales made in such district which are subject to taxation pursuant to sections 144.010 to 144.525, RSMo, except sales of motor vehicles, trailers, boats or outboard motors and sales to **or by** public utilities **and providers of communications, cable, or video services**. Any sales and use tax imposed pursuant to this section may be imposed in increments of one-eighth of one percent, up to a maximum of one percent. Such district sales and use tax may be imposed for any district purpose designated by the district in its ballot of submission to its qualified voters; except that, no resolution adopted pursuant to this section shall become effective unless the board of directors of the district submits to the qualified voters of the district, by mail-in ballot, a proposal to authorize a sales and use tax pursuant to this section. If a majority of the votes cast by the qualified voters on the proposed sales tax are in favor of the sales tax, then the resolution is adopted. If a majority of the votes cast by the qualified voters are opposed to the sales tax, then the resolution is void.

2. The ballot shall be substantially in the following form:

Shall the ..... (insert name of district) Community Improvement District impose a community improvement districtwide sales and use tax at the maximum rate of ..... (insert amount) for a period of ..... (insert number) years from the date on which such tax is first imposed for the purpose of providing revenue for ..... (insert general description of the purpose)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

3. Within ten days after the qualified voters have approved the imposition of the sales and use tax, the district shall, in accordance with section 32.087, RSMo, notify the director of the department of revenue. The sales and use tax authorized by this section shall become effective on the first day of the second calendar quarter after the director of the department of revenue receives notice of the adoption of such tax.

4. The director of the department of revenue shall collect any tax adopted pursuant to this section pursuant to section 32.087, RSMo.

5. In each district in which a sales and use tax is imposed pursuant to this section, every retailer shall add such additional tax imposed by the district to such retailer's sale price, and when so added such tax shall constitute a part of the purchase price, shall be a debt of the purchaser to the retailer until paid and shall be recoverable at law in the same manner as the purchase price.

6. In order to allow retailers to collect and report the sales and use tax authorized by this section as well as all other sales and use taxes required by law in the simplest and most efficient manner possible, a district may establish appropriate brackets to be used in the district imposing a tax pursuant to this section in lieu of the brackets provided in section 144.285, RSMo.

7. The penalties provided in sections 144.010 to 144.525, RSMo, shall apply to violations of this section.

8. All revenue received by the district from a sales and use tax imposed pursuant to this section which is designated for a specific purpose shall be deposited into a special trust fund and expended solely for such purpose. Upon the expiration of any sales and use tax adopted pursuant to this section, all funds remaining in the special trust fund shall continue to be used solely for the specific purpose designated in the resolution adopted by the qualified voters. Any funds in such special trust fund which are not needed for current expenditures may be invested by the board of directors pursuant to applicable laws relating to the investment of other district funds.

9. A district may repeal by resolution any sales and use tax imposed pursuant to this section before the expiration date of such sales and use tax unless the repeal of such sales and use tax will impair the district's ability to repay any liabilities the district has incurred, moneys the district has borrowed or obligation the district has issued to finance any improvements or services rendered for the district.

10. Notwithstanding the provisions of chapter 115, RSMo, an election for a district sales and use tax under this section shall be conducted in accordance with the provisions of this section.

99.820. MUNICIPALITIES' POWERS AND DUTIES — COMMISSION APPOINTMENT AND POWERS — PUBLIC DISCLOSURE REQUIREMENTS — OFFICIALS' CONFLICT OF INTEREST, PROHIBITED. — 1. A municipality may:

(1) By ordinance introduced in the governing body of the municipality within fourteen to ninety days from the completion of the hearing required in section 99.825, approve redevelopment plans and redevelopment projects, and designate redevelopment project areas pursuant to the notice and hearing requirements of sections 99.800 to 99.865. No redevelopment project shall be approved unless a redevelopment plan has been approved and a redevelopment area has been designated prior to or concurrently with the approval of such redevelopment project and the area selected for the redevelopment project shall include only those parcels of real property and improvements thereon directly and substantially benefited by the proposed redevelopment project improvements;

(2) Make and enter into all contracts necessary or incidental to the implementation and furtherance of its redevelopment plan or project;

(3) Pursuant to a redevelopment plan, subject to any constitutional limitations, acquire by purchase, donation, lease or, as part of a redevelopment project, eminent domain, own, convey, lease, mortgage, or dispose of, land and other property, real or personal, or rights or interests therein, and grant or acquire licenses, easements and options with respect thereto, all in the

manner and at such price the municipality or the commission determines is reasonably necessary to achieve the objectives of the redevelopment plan. No conveyance, lease, mortgage, disposition of land or other property, acquired by the municipality, or agreement relating to the development of the property shall be made except upon the adoption of an ordinance by the governing body of the municipality. Each municipality or its commission shall establish written procedures relating to bids and proposals for implementation of the redevelopment projects. Furthermore, no conveyance, lease, mortgage, or other disposition of land or agreement relating to the development of property shall be made without making public disclosure of the terms of the disposition and all bids and proposals made in response to the municipality's request. Such procedures for obtaining such bids and proposals shall provide reasonable opportunity for any person to submit alternative proposals or bids;

(4) Within a redevelopment area, clear any area by demolition or removal of existing buildings and structures;

(5) Within a redevelopment area, renovate, rehabilitate, or construct any structure or building;

(6) Install, repair, construct, reconstruct, or relocate streets, utilities, and site improvements essential to the preparation of the redevelopment area for use in accordance with a redevelopment plan;

(7) Within a redevelopment area, fix, charge, and collect fees, rents, and other charges for the use of any building or property owned or leased by it or any part thereof, or facility therein;

(8) Accept grants, guarantees, and donations of property, labor, or other things of value from a public or private source for use within a redevelopment area;

(9) Acquire and construct public facilities within a redevelopment area;

(10) Incur redevelopment costs and issue obligations;

(11) Make payment in lieu of taxes, or a portion thereof, to taxing districts;

(12) Disburse surplus funds from the special allocation fund to taxing districts as follows:

(a) Such surplus payments in lieu of taxes shall be distributed to taxing districts within the redevelopment area which impose ad valorem taxes on a basis that is proportional to the current collections of revenue which each taxing district receives from real property in the redevelopment area;

(b) Surplus economic activity taxes shall be distributed to taxing districts in the redevelopment area which impose economic activity taxes, on a basis that is proportional to the amount of such economic activity taxes the taxing district would have received from the redevelopment area had tax increment financing not been adopted;

(c) Surplus revenues, other than payments in lieu of taxes and economic activity taxes, deposited in the special allocation fund, shall be distributed on a basis that is proportional to the total receipt of such other revenues in such account in the year prior to disbursement;

(13) If any member of the governing body of the municipality, a member of a commission established pursuant to subsection 2 **or 3** of this section, or an employee or consultant of the municipality, involved in the planning and preparation of a redevelopment plan, or redevelopment project for a redevelopment area or proposed redevelopment area, owns or controls an interest, direct or indirect, in any property included in any redevelopment area, or proposed redevelopment area, which property is designated to be acquired or improved pursuant to a redevelopment project, he or she shall disclose the same in writing to the clerk of the municipality, and shall also so disclose the dates, terms, and conditions of any disposition of any such interest, which disclosures shall be acknowledged by the governing body of the municipality and entered upon the minutes books of the governing body of the municipality. If an individual holds such an interest, then that individual shall refrain from any further official involvement in regard to such redevelopment plan, redevelopment project or redevelopment area, from voting on any matter pertaining to such redevelopment plan, redevelopment project or redevelopment area, or communicating with other members concerning any matter pertaining to that redevelopment plan, redevelopment project or redevelopment area. Furthermore, no such

member or employee shall acquire any interest, direct or indirect, in any property in a redevelopment area or proposed redevelopment area after either (a) such individual obtains knowledge of such plan or project, or (b) first public notice of such plan, project or area pursuant to section 99.830, whichever first occurs;

(14) Charge as a redevelopment cost the reasonable costs incurred by its clerk or other official in administering the redevelopment project. The charge for the clerk's or other official's costs shall be determined by the municipality based on a recommendation from the commission, created pursuant to this section.

2. Prior to adoption of an ordinance approving the designation of a redevelopment area or approving a redevelopment plan or redevelopment project, the municipality shall create a commission of nine persons if the municipality is a county or a city not within a county and not a first class county with a charter form of government with a population in excess of nine hundred thousand, and eleven persons if the municipality is not a county and not in a first class county with a charter form of government having a population of more than nine hundred thousand, and twelve persons if the municipality is located in or is a first class county with a charter form of government having a population of more than nine hundred thousand, to be appointed as follows:

(1) In all municipalities two members shall be appointed by the school boards whose districts are included within the redevelopment plan or redevelopment area. Such members shall be appointed in any manner agreed upon by the affected districts;

(2) In all municipalities one member shall be appointed, in any manner agreed upon by the affected districts, to represent all other districts levying ad valorem taxes within the area selected for a redevelopment project or the redevelopment area, excluding representatives of the governing body of the municipality;

(3) In all municipalities six members shall be appointed by the chief elected officer of the municipality, with the consent of the majority of the governing body of the municipality;

(4) In all municipalities which are not counties and not in a first class county with a charter form of government having a population in excess of nine hundred thousand, two members shall be appointed by the county of such municipality in the same manner as members are appointed in subdivision (3) of this subsection;

(5) In a municipality which is a county with a charter form of government having a population in excess of nine hundred thousand, three members shall be appointed by the cities in the county which have tax increment financing districts in a manner in which the cities shall agree;

(6) In a municipality which is located in the first class county with a charter form of government having a population in excess of nine hundred thousand, three members shall be appointed by the county of such municipality in the same manner as members are appointed in subdivision (3) of this subsection;

(7) **[**Effective January 1, 2008, in a municipality which is in a county under the authority of the East-West Gateway Council of Governments, except any municipality in any county of the first classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, the municipality shall create a commission in the same manner as the commission for any county with a charter form of government and with more than one million inhabitants, such commission shall have twelve members with two such members appointed by the school boards whose districts are included in the county in a manner in which such school boards agree, with one such member to represent all other districts levying ad valorem taxes in a manner in which all such districts agree, six such members appointed either by the county executive or county commissioner, and three such members appointed by the cities in the county which have tax increment financing districts in a manner in which the cities shall agree;

(8) Effective January 1, 2008, when any city, town, or village under the authority of the East-West Gateway Council of Governments, except any municipality in any county of the first

classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, desires to implement a tax increment financing project, such city, town, or village shall first obtain the permission of the county tax increment financing commission created in this subsection within which the city, town, or village is located. In the event such commission votes in opposition to the redevelopment project, such redevelopment project shall not be approved unless at least two-thirds of the governing body of the city, town, or village votes to approve such project;

(9)**]** At the option of the members appointed by the municipality, the members who are appointed by the school boards and other taxing districts may serve on the commission for a term to coincide with the length of time a redevelopment project, redevelopment plan or designation of a redevelopment area is considered for approval by the commission, or for a definite term pursuant to this subdivision. If the members representing school districts and other taxing districts are appointed for a term coinciding with the length of time a redevelopment project, plan or area is approved, such term shall terminate upon final approval of the project, plan or designation of the area by the governing body of the municipality. Thereafter the commission shall consist of the six members appointed by the municipality, except that members representing school boards and other taxing districts shall be appointed as provided in this section prior to any amendments to any redevelopment plans, redevelopment projects or designation of a redevelopment area. If any school district or other taxing jurisdiction fails to appoint members of the commission within thirty days of receipt of written notice of a proposed redevelopment plan, redevelopment project or designation of a redevelopment area, the remaining members may proceed to exercise the power of the commission. Of the members first appointed by the municipality, two shall be designated to serve for terms of two years, two shall be designated to serve for a term of three years and two shall be designated to serve for a term of four years from the date of such initial appointments. Thereafter, the members appointed by the municipality shall serve for a term of four years, except that all vacancies shall be filled for unexpired terms in the same manner as were the original appointments. **Members appointed by the county executive or presiding commissioner prior to August 28, 2008, shall continue their service on the commission established in subsection 3 of this section without further appointment unless the county executive or presiding commissioner appoints a new member or members.**

3. **[**The commission**] Beginning August 28, 2008:**

(1) In lieu of a commission created under subsection 2 of this section, any city, town, or village in a county with a charter form of government and with more than one million inhabitants, in a county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants, or in a county of the first classification with more than one hundred eighty-five thousand but fewer than two hundred thousand inhabitants shall, prior to adoption of an ordinance approving the designation of a redevelopment area or approving a redevelopment plan or redevelopment project, create a commission consisting of twelve persons to be appointed as follows:

(a) Six members appointed either by the county executive or presiding commissioner; notwithstanding any provision of law to the contrary, no approval by the county's governing body shall be required;

(b) Three members appointed by the cities, towns, or villages in the county which have tax increment financing districts in a manner in which the chief elected officials of such cities, towns, or villages agree;

(c) Two members appointed by the school boards whose districts are included in the county in a manner in which the school boards agree; and

(d) One member to represent all other districts levying ad valorem taxes in the proposed redevelopment area in a manner in which all such districts agree.

No city, town, or village subject to this subsection shall create or maintain a commission under subsection 2 of this section, except as necessary to complete a public hearing for which notice under section 99.830 has been provided prior to August 28, 2008, and to vote or make recommendations relating to redevelopment plans, redevelopment projects, or designation of redevelopment areas, or amendments thereto that were the subject of such public hearing;

(2) Members appointed to the commission created under this subsection, except those six members appointed by either the county executive or presiding commissioner, shall serve on the commission for a term to coincide with the length of time a redevelopment project, redevelopment plan, or designation of a redevelopment area is considered for approval by the commission. The six members appointed by either the county executive or the presiding commissioner shall serve on all such commissions until replaced. The city, town, or village that creates a commission under this subsection shall send notice thereof by certified mail to the county executive or presiding commissioner, to the school districts whose boundaries include any portion of the proposed redevelopment area, and to the other taxing districts whose boundaries include any portion of the proposed redevelopment area. The city, town, or village that creates the commission shall also be solely responsible for notifying all other cities, towns, and villages in the county that have tax increment financing districts and shall exercise all administrative functions of the commission. The school districts receiving notice from the city, town, or village shall be solely responsible for notifying the other school districts within the county of the formation of the commission. If the county, school board, or other taxing district fails to appoint members to the commission within thirty days after the city, town, or village sends the written notice, as provided herein, that it has convened such a commission or within thirty days of the expiration of any such member's term, the remaining duly appointed members of the commission may exercise the full powers of the commission.

4. (1) Any commission created under this section, subject to approval of the governing body of the municipality, may exercise the powers enumerated in sections 99.800 to 99.865, except final approval of plans, projects and designation of redevelopment areas. The commission shall hold public hearings and provide notice pursuant to sections 99.825 and 99.830. **[**The**]**

(2) Any commission **created under subsection 2 of this section** shall vote on all proposed redevelopment plans, redevelopment projects and designations of redevelopment areas, and amendments thereto, within thirty days following completion of the hearing on any such plan, project or designation and shall make recommendations to the governing body within ninety days of the hearing referred to in section 99.825 concerning the adoption of or amendment to redevelopment plans and redevelopment projects and the designation of redevelopment areas. The requirements of subsection 2 of this section and this subsection shall not apply to redevelopment projects upon which the required hearings have been duly held prior to August 31, 1991.

(3) Any commission created under subsection 3 of this section shall, within fifteen days of the receipt of a redevelopment plan meeting the minimum requirements of section 99.810, as determined by counsel to the city, town, or village creating the commission and a request by the applicable city, town, or village for a public hearing, fix a time and place for the public hearing referred to in section 99.825. The public hearing shall be held no later than seventy-five days from the commission's receipt of such redevelopment plan and request for public hearing. The commission shall vote and make recommendations to the governing body of the city, town, or village requesting the public hearing on all proposed redevelopment plans, redevelopment projects, and designations of redevelopment areas, and amendments thereto within thirty days following the completion of the public hearing. If the commission fails to vote within thirty days following the completion of the public hearing referred to in section 99.825 concerning the proposed redevelopment plan, redevelopment project, or designation of redevelopment area, or amendments thereto,

such plan, project, designation, or amendment thereto shall be deemed rejected by the commission.

99.825. ADOPTION OF ORDINANCE FOR REDEVELOPMENT, PUBLIC HEARING REQUIRED — OBJECTION PROCEDURE — HEARING AND NOTICES NOT REQUIRED, WHEN — RESTRICTIONS ON CERTAIN PROJECTS. — 1. Prior to the adoption of an ordinance proposing the designation of a redevelopment area, or approving a redevelopment plan or redevelopment project, the commission shall fix a time and place for a public hearing **as required in subsection 4 of section 99.820** and notify each taxing district located wholly or partially within the boundaries of the proposed redevelopment area, plan or project. At the public hearing any interested person or affected taxing district may file with the commission written objections to, or comments on, and may be heard orally in respect to, any issues embodied in the notice. The commission shall hear and consider all protests, objections, comments and other evidence presented at the hearing. The hearing may be continued to another date without further notice other than a motion to be entered upon the minutes fixing the time and place of the subsequent hearing**; provided, if the commission is created under subsection 3 of section 99.820, the hearing shall not be continued for more than thirty days beyond the date on which it is originally opened unless such longer period is requested by the chief elected official of the municipality creating the commission and approved by a majority of the commission**. Prior to the conclusion of the hearing, changes may be made in the redevelopment plan, redevelopment project, or redevelopment area, provided that each affected taxing district is given written notice of such changes at least seven days prior to the conclusion of the hearing. After the public hearing but prior to the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, changes may be made to the redevelopment plan, redevelopment projects or redevelopment areas without a further hearing, if such changes do not enlarge the exterior boundaries of the redevelopment area or areas, and do not substantially affect the general land uses established in the redevelopment plan or substantially change the nature of the redevelopment projects, provided that notice of such changes shall be given by mail to each affected taxing district and by publication in a newspaper of general circulation in the area of the proposed redevelopment not less than ten days prior to the adoption of the changes by ordinance. After the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, no ordinance shall be adopted altering the exterior boundaries, affecting the general land uses established pursuant to the redevelopment plan or changing the nature of the redevelopment project without complying with the procedures provided in this section pertaining to the initial approval of a redevelopment plan or redevelopment project and designation of a redevelopment area. Hearings with regard to a redevelopment project, redevelopment area, or redevelopment plan may be held simultaneously.

2. Effective January 1, 2008, if, after concluding the hearing required under this section, the commission makes a recommendation under section 99.820 in opposition to a proposed redevelopment plan, redevelopment project, or designation of a redevelopment area, or any amendments thereto, a municipality desiring to approve such project, plan, designation, or amendments shall do so only upon a two-thirds majority vote of the governing body of such municipality.

3. Tax incremental financing projects within an economic development area shall apply to and fund only the following infrastructure projects: highways, roads, streets, bridges, sewers, traffic control systems and devices, water distribution and supply systems, curbing, sidewalks and any other similar public improvements, but in no case shall it include buildings.

[99.825. ADOPTION OF ORDINANCE FOR REDEVELOPMENT, PUBLIC HEARING REQUIRED — OBJECTION PROCEDURE — HEARING AND NOTICES NOT REQUIRED, WHEN — RESTRICTIONS ON CERTAIN PROJECTS. — 1. Prior to the adoption of an ordinance proposing

the designation of a redevelopment area, or approving a redevelopment plan or redevelopment project, the commission shall fix a time and place for a public hearing and notify each taxing district located wholly or partially within the boundaries of the proposed redevelopment area, plan or project. At the public hearing any interested person or affected taxing district may file with the commission written objections to, or comments on, and may be heard orally in respect to, any issues embodied in the notice. The commission shall hear and consider all protests, objections, comments and other evidence presented at the hearing. The hearing may be continued to another date without further notice other than a motion to be entered upon the minutes fixing the time and place of the subsequent hearing. Prior to the conclusion of the hearing, changes may be made in the redevelopment plan, redevelopment project, or redevelopment area, provided that each affected taxing district is given written notice of such changes at least seven days prior to the conclusion of the hearing. After the public hearing but prior to the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, changes may be made to the redevelopment plan, redevelopment projects or redevelopment areas without a further hearing, if such changes do not enlarge the exterior boundaries of the redevelopment area or areas, and do not substantially affect the general land uses established in the redevelopment plan or substantially change the nature of the redevelopment projects, provided that notice of such changes shall be given by mail to each affected taxing district and by publication in a newspaper of general circulation in the area of the proposed redevelopment not less than ten days prior to the adoption of the changes by ordinance. After the adoption of an ordinance approving a redevelopment plan or redevelopment project, or designating a redevelopment area, no ordinance shall be adopted altering the exterior boundaries, affecting the general land uses established pursuant to the redevelopment plan or changing the nature of the redevelopment project without complying with the procedures provided in this section pertaining to the initial approval of a redevelopment plan or redevelopment project and designation of a redevelopment area. Hearings with regard to a redevelopment project, redevelopment area, or redevelopment plan may be held simultaneously.

2. Tax incremental financing projects within an economic development area shall apply to and fund only the following infrastructure projects: highways, roads, streets, bridges, sewers, traffic control systems and devices, water distribution and supply systems, curbing, sidewalks and any other similar public improvements, but in no case shall it include buildings.**]**

105.485. FINANCIAL INTEREST STATEMENTS — FORM — CONTENTS — POLITICAL SUBDIVISIONS, COMPLIANCE. — 1. Each financial interest statement required by sections 105.483 to 105.492 shall be on a form prescribed by the commission and shall be signed and verified by a written declaration that it is made under penalties of perjury; provided, however, the form shall not seek information which is not specifically required by sections 105.483 to 105.492.

2. Each person required to file a financial interest statement pursuant to subdivisions (1) to (12) of section 105.483 shall file the following information for himself, his spouse and dependent children at any time during the period covered by the statement, whether singularly or collectively; provided, however, that said person, if he does not know and his spouse will not divulge any information required to be reported by this section concerning the financial interest of his spouse, shall state on his financial interest statement that he has disclosed that information known to him and that his spouse has refused or failed to provide other information upon his bona fide request, and such statement shall be deemed to satisfy the requirements of this section for such financial interest of his spouse; and provided further if the spouse of any person required to file a financial interest statement is also required by section 105.483 to file a financial interest statement, the financial interest statement filed by each need not disclose the financial interest of the other, provided that each financial interest statement shall state that the spouse of the person has filed a separate financial interest statement and the name under which the statement was filed:

(1) The name and address of each of the employers of such person from whom income of one thousand dollars or more was received during the year covered by the statement;

(2) The name and address of each sole proprietorship which he owned; the name, address and the general nature of the business conducted of each general partnership and joint venture in which he was a partner or participant; the name and address of each partner or coparticipant for each partnership or joint venture unless such names and addresses are filed by the partnership or joint venture with the secretary of state; the name, address and general nature of the business conducted of any closely held corporation or limited partnership in which the person owned ten percent or more of any class of the outstanding stock or limited partners' units; and the name of any publicly traded corporation or limited partnership which is listed on a regulated stock exchange or automated quotation system in which the person owned two percent or more of any class of outstanding stock, limited partnership units or other equity interests;

(3) The name and address of any other source not reported pursuant to subdivisions (1) and (2) and subdivisions (4) to (9) of this subsection from which such person received one thousand dollars or more of income during the year covered by the statement, including, but not limited to, any income otherwise required to be reported on any tax return such person is required by law to file; except that only the name of any publicly traded corporation or limited partnership which is listed on a regulated stock exchange or automated quotation system need be reported pursuant to this subdivision;

(4) The location by county, the subclassification for property tax assessment purposes, the approximate size and a description of the major improvements and use for each parcel of real property in the state, other than the individual's personal residence, having a fair market value of ten thousand dollars or more in which such person held a vested interest including a leasehold for a term of ten years or longer, and, if the property was transferred during the year covered by the statement, the name and address of the persons furnishing or receiving consideration for such transfer;

(5) The name and address of each entity in which such person owned stock, bonds or other equity interest with a value in excess of ten thousand dollars; except that, if the entity is a corporation listed on a regulated stock exchange, only the name of the corporation need be listed; and provided that any member of any board or commission of the state or any political subdivision who does not receive any compensation for his services to the state or political subdivision other than reimbursement for his actual expenses or a per diem allowance as prescribed by law for each day of such service need not report interests in publicly traded corporations or limited partnerships which are listed on a regulated stock exchange or automated quotation system pursuant to this subdivision; and provided further that the provisions of this subdivision shall not require reporting of any interest in any qualified plan or annuity pursuant to the Employees' Retirement Income Security Act;

(6) The name and address of each corporation for which such person served in the capacity of a director, officer or receiver;

(7) The name and address of each not-for-profit corporation and each association, organization, or union, whether incorporated or not, except not-for-profit corporations formed to provide church services, fraternal organizations or service clubs from which the officer or employee draws no remuneration, in which such person was an officer, director, employee or trustee at any time during the year covered by the statement, and for each such organization, a general description of the nature and purpose of the organization;

(8) The name and address of each source from which such person received a gift or gifts, or honorarium or honoraria in excess of two hundred dollars in value per source during the year covered by the statement other than gifts from persons within the third degree of consanguinity or affinity of the person filing the financial interest statement. For the purposes of this section, a "gift" shall not be construed to mean political contributions otherwise required to be reported by law or hospitality such as food, beverages or admissions to social, art, or sporting events or the like, or informational material. For the purposes of this section, a "gift" shall include gifts to

or by creditors of the individual for the purpose of canceling, reducing or otherwise forgiving the indebtedness of the individual to that creditor;

(9) The lodging and travel expenses provided by any third person for expenses incurred outside the state of Missouri whether by gift or in relation to the duties of office of such official, except that such statement shall not include travel or lodging expenses:

(a) Paid in the ordinary course of business for businesses described in subdivisions (1), (2), (5) and (6) of this subsection which are related to the duties of office of such official; or

(b) For which the official may be reimbursed as provided by law; or

(c) Paid by persons related by the third degree of consanguinity or affinity to the person filing the statement; or

(d) Expenses which are reported by the campaign committee or candidate committee of the person filing the statement pursuant to the provisions of chapter 130, RSMo; or

(e) Paid for purely personal purposes which are not related to the person's official duties by a third person who is not a lobbyist, a lobbyist principal or member, or officer or director of a member, of any association or entity which employs a lobbyist. The statement shall include the name and address of such person who paid the expenses, the date such expenses were incurred, the amount incurred, the location of the travel and lodging, and the nature of the services rendered or reason for the expenses;

(10) The assets in any revocable trust of which the individual is the settlor if such assets would otherwise be required to be reported under this section;

(11) The name, position and relationship of any relative within the first degree of consanguinity or affinity to any other person who:

(a) Is employed by the state of Missouri, by a political subdivision of the state or special district, as defined in section 115.013, RSMo, of the state of Missouri;

(b) Is a lobbyist; or

(c) Is a fee agent of the department of revenue;

(12) The name and address of each campaign committee, political committee, candidate committee, or continuing committee for which such person or any corporation listed on such person's financial interest statement received payment**; and**

(13) For members of the general assembly or any state-wide elected public official, their spouses, and their dependent children, whether any state tax credits were claimed on the member's, spouse's, or dependent child's most recent state income tax return.

3. For the purposes of subdivisions (1), (2) and (3) of subsection 2 of this section, an individual shall be deemed to have received a salary from his employer or income from any source at the time when he shall receive a negotiable instrument whether or not payable at a later date and at the time when under the practice of his employer or the terms of an agreement, he has earned or is entitled to anything of actual value whether or not delivery of the value is deferred or right to it has vested. The term "income" as used in this section shall have the same meaning as provided in the Internal Revenue Code of 1986, and amendments thereto, as the same may be or becomes effective, at any time or from time to time for the taxable year, provided that income shall not be considered received or earned for purposes of this section from a partnership or sole proprietorship until such income is converted from business to personal use.

4. Each official, officer or employee or candidate of any political subdivision described in subdivision (11) of section 105.483 shall be required to file a financial interest statement as required by subsection 2 of this section, unless the political subdivision biennially adopts an ordinance, order or resolution at an open meeting by September fifteenth of the preceding year, which establishes and makes public its own method of disclosing potential conflicts of interest and substantial interests and therefore excludes the political subdivision or district and its officers and employees from the requirements of subsection 2 of this section. A certified copy of the ordinance, order or resolution shall be sent to the commission within ten days of its adoption. The commission shall assist any political subdivision in developing forms to complete the

requirements of this subsection. The ordinance, order or resolution shall contain, at a minimum, the following requirements with respect to disclosure of substantial interests:

(1) Disclosure in writing of the following described transactions, if any such transactions were engaged in during the calendar year:

(a) For such person, and all persons within the first degree of consanguinity or affinity of such person, the date and the identities of the parties to each transaction with a total value in excess of five hundred dollars, if any, that such person had with the political subdivision, other than compensation received as an employee or payment of any tax, fee or penalty due to the political subdivision, and other than transfers for no consideration to the political subdivision;

(b) The date and the identities of the parties to each transaction known to the person with a total value in excess of five hundred dollars, if any, that any business entity in which such person had a substantial interest, had with the political subdivision, other than payment of any tax, fee or penalty due to the political subdivision or transactions involving payment for providing utility service to the political subdivision, and other than transfers for no consideration to the political subdivision;

(2) The chief administrative officer and chief purchasing officer of such political subdivision shall disclose in writing the information described in subdivisions (1), (2) and (6) of subsection 2 of this section;

(3) Disclosure of such other financial interests applicable to officials, officers and employees of the political subdivision, as may be required by the ordinance or resolution;

(4) Duplicate disclosure reports made pursuant to this subsection shall be filed with the commission and the governing body of the political subdivision. The clerk of such governing body shall maintain such disclosure reports available for public inspection and copying during normal business hours.

105.1270. NO CONFLICT OF INTEREST FOR STATE — AUTHORIZED TAX CREDITS, ABATEMENTS, EXEMPTIONS, OR LOANS, WHEN. — 1. Notwithstanding any provision to the contrary, a corporation, partnership, firm, trust, association, or other entity shall not be disqualified from receiving any state authorized tax credit, abatement, exemption, or loan on the basis that there exists a conflict of interest due to a relationship of any degree or affinity to any statewide elected official or member of the general assembly, when the person of relation holds less than a two percent equity interest in the entity standing to benefit from the credit, abatement, exemption, or loan.

135.305. ELIGIBILITY — AMOUNT OF TAX CREDIT. — A Missouri wood energy producer shall be eligible for a tax credit on taxes otherwise due under chapter 143, RSMo, except sections 143.191 to 143.261, RSMo, as a production incentive to produce processed wood products in a qualified wood producing facility using Missouri forest product residue. The tax credit to the wood energy producer shall be five dollars per ton of processed material. The credit may be claimed for a period of five years and is to be a tax credit against the tax otherwise due. **No new tax credits, provided for under sections 135.300 to 135.311, shall be authorized after June 30, 2013.**

135.682. LETTER RULINGS TO BE ISSUED, PROCEDURE — LETTER RULINGS CLOSED RECORDS. — 1. The director of the department of economic development or the director's designee shall issue letter rulings regarding the tax credit program authorized under section 135.680, subject to the terms and conditions set forth in this section. The director of the department of economic development may impose additional terms and conditions consistent with this section to requests for letter rulings by regulation promulgated under chapter 536, RSMo. For the purposes of this section, the term "letter ruling" means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

2. The director or director's designee shall respond to a request for a letter ruling within sixty days of receipt of such request. The applicant may provide a draft letter ruling for the department's consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the issuance of the letter ruling. The director or the director's designee may refuse to issue a letter ruling for good cause, but must list the specific reasons for refusing to issue the letter ruling. Good cause includes, but is not limited to:

(1) The applicant requests the director to determine whether a statute is constitutional or a regulation is lawful;

(2) The request involves a hypothetical situation or alternative plans;

(3) The facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling; and

(4) The issue is currently being considered in a rulemaking procedure, contested case, or other agency or judicial proceeding that may definitely resolve the issue.

3. Letter rulings shall bind the director and the director's agents and their successors until such time as the taxpayer or its shareholders, members, or partners, as applicable, claim all of such tax credits on a Missouri tax return, subject to the terms and conditions set forth in properly published regulations. The letter ruling shall apply only to the applicant.

4. Letter rulings issued under the authority of this section shall not be a rule as defined in section 536.010, RSMo, in that it is an interpretation issued by the department with respect to a specific set of facts and intended to apply only to that specific set of facts, and therefore shall not be subject to the rulemaking requirements of chapter 536, RSMo.

5. Information in letter ruling requests as described in section 620.014, RSMo, shall be closed to the public. Copies of letter rulings shall be available to the public provided that the applicant identifying information and otherwise protected information is redacted from the letter ruling as provided in subsection 1 of section 610.024, RSMo.

135.800. CITATION — DEFINITIONS. — 1. The provisions of sections 135.800 to 135.830 shall be known and may be cited as the "Tax Credit Accountability Act of 2004".

2. As used in sections 135.800 to 135.830, the following terms mean:

(1) "Administering agency", the state agency or department charged with administering a particular tax credit program, as set forth by the program's enacting statute; where no department or agency is set forth, the department of revenue;

(2) "Agricultural tax credits", the agricultural product utilization contributor tax credit created pursuant to section 348.430, RSMo, the new generation cooperative incentive tax credit created pursuant to section 348.432, RSMo, and the wine and grape production tax credit created pursuant to section 135.700;

(3) "All tax credit programs", the tax credit programs included in the definitions of agricultural tax credits, business recruitment tax credits, community development tax credits, domestic and social tax credits, entrepreneurial tax credits, environmental tax credits, housing tax credits, redevelopment tax credits, and training and educational tax credits;

(4) "Business recruitment tax credits", the business facility tax credit created pursuant to sections 135.110 to 135.150 and section 135.258, the enterprise zone tax benefits created pursuant to sections 135.200 to 135.270, the business use incentives for large-scale development programs created pursuant to sections 100.700 to 100.850, RSMo, the development tax credits created pursuant to sections 32.100 to 32.125, RSMo, the rebuilding communities tax credit created pursuant to section 135.535, and the film production tax credit created pursuant to section 135.750;

(5) "Community development tax credits", the neighborhood assistance tax credit created pursuant to sections 32.100 to 32.125, RSMo, the family development account tax credit created pursuant to sections 208.750 to 208.775, RSMo, the dry fire hydrant tax credit created pursuant

to section 320.093, RSMo, and the transportation development tax credit created pursuant to section 135.545;

(6) "Domestic and social tax credits", the youth opportunities tax credit created pursuant to section 135.460 and sections 620.1100 to 620.1103, RSMo, the shelter for victims of domestic violence created pursuant to section 135.550, the senior citizen or disabled person property tax credit created pursuant to sections 135.010 to 135.035, the special needs adoption tax credit created pursuant to sections 135.325 to 135.339, the maternity home tax credit created pursuant to section 135.600, and the shared care tax credit created pursuant to section 660.055, RSMo;

(7) "Entrepreneurial tax credits", the capital tax credit created pursuant to sections 135.400 to 135.429, the certified capital company tax credit created pursuant to sections 135.500 to 135.529, the seed capital tax credit created pursuant to sections 348.300 to 348.318, RSMo, the new enterprise creation tax credit created pursuant to sections 620.635 to 620.653, RSMo, the research tax credit created pursuant to section 620.1039, RSMo, the small business incubator tax credit created pursuant to section 620.495, RSMo, the guarantee fee tax credit created pursuant to section 135.766, and the new generation cooperative tax credit created pursuant to sections 32.105 to 32.125, RSMo;

(8) "Environmental tax credits", the charcoal producer tax credit created pursuant to section 135.313, the wood energy tax credit created pursuant to sections 135.300 to 135.311**[**, and the manufacturing and recycling flexible cellulose casing tax credit created pursuant to section 260.285, RSMo**]**;

(9) "Housing tax credits", the neighborhood preservation tax credit created pursuant to sections 135.475 to 135.487, the low-income housing tax credit created pursuant to sections 135.350 to 135.363, and the affordable housing tax credit created pursuant to sections 32.105 to 32.125, RSMo;

(10) "Recipient", the individual or entity who is the original applicant for and who receives proceeds from a tax credit program directly from the administering agency, the person or entity responsible for the reporting requirements established in section 135.805;

(11) "Redevelopment tax credits", the historic preservation tax credit created pursuant to sections 253.545 to 253.561, RSMo, the brownfield redevelopment program tax credit created pursuant to sections 447.700 to 447.718, RSMo, the community development corporations tax credit created pursuant to sections 135.400 to 135.430, the infrastructure tax credit created pursuant to subsection 6 of section 100.286, RSMo, the bond guarantee tax credit created pursuant to section 100.297, RSMo, and the disabled access tax credit created pursuant to section 135.490;

(12) "Training and educational tax credits", the community college new jobs tax credit created pursuant to sections 178.892 to 178.896, RSMo**[**, the skills development account tax credit created pursuant to sections 620.1400 to 620.1460, RSMo, the mature worker tax credit created pursuant to section 620.1560, RSMo, and the sponsorship and mentoring tax credit created pursuant to section 135.348**]**.

135.803. INELIGIBILITY BASED ON CONFLICT OF INTERESTS WHEN. — A taxpayer shall not be deemed ineligible for any state tax credit program in effect or hereinafter established on the basis that there exists a conflict of interest due to a relationship of any degree or affinity to any statewide elected official or member of the general assembly, when the person of relation holds less than a two percent equity interest in the taxpayer.

135.805. CERTAIN INFORMATION TO BE SUBMITTED ANNUALLY, WHO, TIME PERIOD — DUE DATE OF REPORTING REQUIREMENTS — REQUIREMENTS TO APPLY TO CERTAIN RECIPIENTS, WHEN — APPLICANT IN COMPLIANCE, WHEN, WRITTEN NOTIFICATION, WHEN, RECORDS AVAILABLE FOR REVIEW — EFFECTIVE DATE — NAMES OF RECIPIENTS TO BE MADE PUBLIC. — 1. A recipient of a community development tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency

information confirming the title and location of the corresponding project, the estimated or actual time period for completion of the project, and all geographic areas impacted by the project.

2. A recipient of a redevelopment tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming whether the property is used for residential, commercial, or governmental purposes, and the projected or actual project cost, labor cost, and date of completion.

3. A recipient of a business recruitment tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the category of business by size, the address of the business headquarters and all offices located within this state, the number of employees at the time of the annual update, an updated estimate of the number of employees projected to increase as a result of the completion of the project, and the estimated or actual project cost.

4. A recipient of a training and educational tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the name and address of the educational institution used, the average salary of workers served as of such annual update, the estimated or actual project cost, and the number of employees and number of students served as of such annual update.

5. A recipient of a housing tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the address of the property, the fair market value of the property, as defined in subsection 6 of section 135.802, and the projected or actual labor cost and completion date of the project.

6. A recipient of an entrepreneurial tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the amount of investment and the names of the project, fund, and research project.

7. A recipient of an agricultural tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the type of agricultural commodity, the amount of contribution, the type of equipment purchased, and the name and description of the facility, except that if the agricultural credit is issued as a result of a producer member investing in a new generation processing entity then the new generation processing entity, and not the recipient, shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the type of agricultural commodity, the amount of contribution, the type of equipment purchased, and the name and description of the facility.

8. A recipient of an environmental tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information detailing any change to the type of equipment purchased, if applicable, and any change to any environmental impact statement, if such statement is required by state or federal law.

9. The reporting requirements established in this section shall be due annually on June thirtieth of each year. No person or entity shall be required to make an annual report until at least one year after the credit issuance date.

10. Where the sole requirement for receiving a tax credit in the enabling legislation of any tax credit is an obligatory assessment upon a taxpayer or a monetary contribution to a particular group or entity, the reporting requirements provided in this section shall apply to the recipient of such assessment or contribution and shall not apply to the assessed nor the contributor.

11. Where the enacting statutes of a particular tax credit program or the rules of a particular administering agency require reporting of information that includes the information required in sections 135.802 to 135.810, upon reporting of the required information, the applicant shall be deemed to be in compliance with the requirements of sections 135.802 to 135.810. The administering agency shall notify in writing the department of economic development of the administering agency's status as custodian of any particular tax credit program and that all records pertaining to the program are available at the administering agency's office for review by the department of economic development.

12. The provisions of subsections 1 to 10 of this section shall apply beginning on June 30, 2005.

13. Notwithstanding provisions of law to the contrary, every agency of this state charged with administering a tax credit program authorized under the laws of this state shall make available for public inspection the name of each tax credit recipient and the amount of tax credits issued to each such recipient.

135.815. VERIFICATION OF APPLICANT'S TAX PAYMENT STATUS, WHEN, EFFECT OF DELINQUENCY — EMPLOYMENT OF UNAUTHORIZED ALIENS, EFFECT OF. — **1.** Prior to authorization of any tax credit application, an administering agency shall verify through the department of revenue that the tax credit applicant does not owe any delinquent income, sales, or use taxes, or interest or penalties on such taxes, and through the department of insurance that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that the amount of credits issued shall be reduced by the applicant's tax delinquency. If the department of revenue or the department of insurance concludes that a taxpayer is delinquent after June fifteenth but before July first of any year, and the application of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the deficiency in which interest, penalties, and additions to tax shall be tolled. After applying all available credits towards a tax delinquency, the administering agency shall notify the appropriate department, and that department shall update the amount of outstanding delinquent tax owed by the applicant. If any credits remain after satisfying all insurance, income, sales, and use tax delinquencies, the remaining credits shall be issued to the applicant, subject to the restrictions of other provisions of law.

2. Any applicant of a tax credit program contained in the definition of the term "all tax credit programs" who purposely and directly employs unauthorized aliens shall forfeit any tax credits issued to such applicant which have not been redeemed, and shall repay the amount of any tax credits redeemed by such applicant during the period of time such unauthorized alien was employed by the applicant. As used in this subsection, the term "unauthorized alien" shall mean an alien who does not have the legal right or authorization under federal law to work in the United States, as defined under Section 8 U.S.C. 1324a(h)(3).

135.967. TAX CREDIT ALLOWED, DURATION — PROHIBITION ON RECEIVING OTHER TAX CREDITS — LIMITATIONS ON ISSUANCE OF TAX CREDITS — CAP — ELIGIBILITY OF CERTAIN EXPANSIONS — EMPLOYEE CALCULATIONS — COMPUTATION OF CREDIT — FLOW-THROUGH TAX TREATMENTS — CREDITS MAY BE CLAIMED, WHEN — CERTIFICATES — REFUNDS — VERIFICATION PROCEDURES. — 1. A taxpayer who establishes a new business facility may, upon approval by the department, be allowed a credit, each tax year for up to ten tax years, in an amount determined as set forth in this section, against the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo. No taxpayer shall receive multiple ten-year periods for subsequent expansions at the same facility.

2. Notwithstanding any provision of law to the contrary, any taxpayer who establishes a new business facility in an enhanced enterprise zone and is awarded state tax credits under this section may not also receive tax credits under sections 135.100 to 135.150, sections 135.200 to **[**135.268**]** **135.286**, or section 135.535**, and may not simultaneously receive tax credits under sections 620.1875 to 620.1890, RSMo, at the same facility**.

3. No credit shall be issued pursuant to this section unless:

(1) The number of new business facility employees engaged or maintained in employment at the new business facility for the taxable year for which the credit is claimed equals or exceeds two; and

(2) The new business facility investment for the taxable year for which the credit is claimed equals or exceeds one hundred thousand dollars.

4. The annual amount of credits allowed for an approved enhanced business enterprise shall be the lesser of:

(1) The annual amount authorized by the department for the enhanced business enterprise, which shall be limited to the projected state economic benefit, as determined by the department; or

(2) The sum calculated based upon the following:

(a) A credit of four hundred dollars for each new business facility employee employed within an enhanced enterprise zone;

(b) An additional credit of four hundred dollars for each new business facility employee who is a resident of an enhanced enterprise zone;

(c) An additional credit of four hundred dollars for each new business facility employee who is paid by the enhanced business enterprise a wage that exceeds the average wage paid within the county in which the facility is located, as determined by the department; and

(d) A credit equal to two percent of new business facility investment within an enhanced enterprise zone.

5. Prior to January 1, 2007, in no event shall the department authorize more than four million dollars annually to be issued for all enhanced business enterprises. After December 31, 2006, in no event shall the department authorize more than **[**fourteen**]** **twenty-four** million dollars annually to be issued for all enhanced business enterprises.

6. If a facility, which does not constitute a new business facility, is expanded by the taxpayer, the expansion shall be considered eligible for the credit allowed by this section if:

(1) The taxpayer's new business facility investment in the expansion during the tax period in which the credits allowed in this section are claimed exceeds one hundred thousand dollars and if the number of new business facility employees engaged or maintained in employment at the expansion facility for the taxable year for which credit is claimed equals or exceeds two, and the total number of employees at the facility after the expansion is at least two greater than the total number of employees before the expansion; and

(2) The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in subdivision (14) of section 135.950.

7. The number of new business facility employees during any taxable year shall be determined by dividing by twelve the sum of the number of individuals employed on the last business day of each month of such taxable year. If the new business facility is in operation for less than the entire taxable year, the number of new business facility employees shall be determined by dividing the sum of the number of individuals employed on the last business day of each full calendar month during the portion of such taxable year during which the new business facility was in operation by the number of full calendar months during such period. For the purpose of computing the credit allowed by this section in the case of a facility which qualifies as a new business facility under subsection 6 of this section, and in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision (14) of section 135.950, or subdivision (22) of section 135.950, the number of new business facility employees at such facility shall be reduced by the average number of individuals employed, computed as provided in this subsection, at the facility during the taxable year immediately preceding the taxable year in which such expansion, acquisition, or replacement occurred and shall further be reduced by the number of individuals employed by the taxpayer or related taxpayer that was subsequently transferred to the new business facility from another Missouri facility and for which credits authorized in this section are not being earned, whether such credits are earned because of an expansion, acquisition, relocation, or the establishment of a new facility.

8. In the case where a new business facility employee who is a resident of an enhanced enterprise zone for less than a twelve-month period is employed for less than a twelve-month period, the credits allowed by paragraph (b) of subdivision (2) of subsection 4 of this section

shall be determined by multiplying four hundred dollars by a fraction, the numerator of which is the number of calendar days during the taxpayer's tax year for which such credits are claimed, in which the employee was a resident of an enhanced enterprise zone, and the denominator of which is three hundred sixty-five.

9. For the purpose of computing the credit allowed by this section in the case of a facility which qualifies as a new business facility pursuant to subsection 6 of this section, and in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision (14) of section 135.950 or subdivision (22) of section 135.950, the amount of the taxpayer's new business facility investment in such facility shall be reduced by the average amount, computed as provided in subdivision (14) of section 135.950 for new business facility investment, of the investment of the taxpayer, or related taxpayer immediately preceding such expansion or replacement or at the time of acquisition. Furthermore, the amount of the taxpayer's new business facility investment shall also be reduced by the amount of investment employed by the taxpayer or related taxpayer which was subsequently transferred to the new business facility from another Missouri facility and for which credits authorized in this section are not being earned, whether such credits are earned because of an expansion, acquisition, relocation, or the establishment of a new facility.

10. For a taxpayer with flow-through tax treatment to its members, partners, or shareholders, the credit shall be allowed to members, partners, or shareholders in proportion to their share of ownership on the last day of the taxpayer's tax period.

11. Credits may not be carried forward but shall be claimed for the taxable year during which commencement of commercial operations occurs at such new business facility, and for each of the nine succeeding taxable years for which the credit is issued.

12. Certificates of tax credit authorized by this section may be transferred, sold, or assigned by filing a notarized endorsement thereof with the department that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the department. The sale price cannot be less than seventy-five percent of the par value of such credits.

13. The director of revenue shall issue a refund to the taxpayer to the extent that the amount of credits allowed in this section exceeds the amount of the taxpayer's income tax.

14. Prior to the issuance of tax credits, the department shall verify through the department of revenue, or any other state department, that the tax credit applicant does not owe any delinquent income, sales, or use tax or interest or penalties on such taxes, or any delinquent fees or assessments levied by any state department and through the department of insurance that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that the amount of credits issued shall be reduced by the applicant's tax delinquency. If the department of revenue or the department of insurance, or any other state department, concludes that a taxpayer is delinquent after June fifteenth but before July first of any year and the application of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the deficiency in which interest, penalties, and additions to tax shall be tolled. After applying all available credits toward a tax delinquency, the administering agency shall notify the appropriate department, and that department shall update the amount of outstanding delinquent tax owed by the applicant. If any credits remain after satisfying all insurance, income, sales, and use tax delinquencies, the remaining credits shall be issued to the applicant, subject to the restrictions of other provisions of law.

137.115. REAL AND PERSONAL PROPERTY, ASSESSMENT — MAINTENANCE PLAN — ASSESSOR MAY MAIL FORMS FOR PERSONAL PROPERTY — CLASSES OF PROPERTY, ASSESSMENT — PHYSICAL INSPECTION REQUIRED, WHEN, PROCEDURE. — 1. All other laws to the contrary notwithstanding, the assessor or the assessor's deputies in all counties of this state including the city of St. Louis shall annually make a list of all real and tangible personal property

taxable in the assessor's city, county, town or district. Except as otherwise provided in subsection 3 of this section and section 137.078, the assessor shall annually assess all personal property at thirty-three and one-third percent of its true value in money as of January first of each calendar year. The assessor shall annually assess all real property, including any new construction and improvements to real property, and possessory interests in real property at the percent of its true value in money set in subsection 5 of this section. **The true value in money of any possessory interest in real property in subclass (3), where such real property is on or lies within the ultimate airport boundary as shown by a federal airport layout plan, as defined by 14 CFR 151.5 of a commercial airport having a FAR Part 139 certification and owned by a political subdivision, shall be the otherwise applicable true value in money of any such possessory interest in real property, less the total dollar amount of costs paid by a party, other than the political subdivision, towards any new construction or improvements on such real property completed after January 1, 2008, and which are included in the above-mentioned possessory interest, regardless of the year in which such costs were incurred or whether such costs were considered in any prior year.** The assessor shall annually assess all real property in the following manner: new assessed values shall be determined as of January first of each odd-numbered year and shall be entered in the assessor's books; those same assessed values shall apply in the following even-numbered year, except for new construction and property improvements which shall be valued as though they had been completed as of January first of the preceding odd-numbered year. The assessor may call at the office, place of doing business, or residence of each person required by this chapter to list property, and require the person to make a correct statement of all taxable tangible personal property owned by the person or under his or her care, charge or management, taxable in the county. On or before January first of each even-numbered year, the assessor shall prepare and submit a two-year assessment maintenance plan to the county governing body and the state tax commission for their respective approval or modification. The county governing body shall approve and forward such plan or its alternative to the plan to the state tax commission by February first. If the county governing body fails to forward the plan or its alternative to the plan to the state tax commission by February first, the assessor's plan shall be considered approved by the county governing body. If the state tax commission fails to approve a plan and if the state tax commission and the assessor and the governing body of the county involved are unable to resolve the differences, in order to receive state cost-share funds outlined in section 137.750, the county or the assessor shall petition the administrative hearing commission, by May first, to decide all matters in dispute regarding the assessment maintenance plan. Upon agreement of the parties, the matter may be stayed while the parties proceed with mediation or arbitration upon terms agreed to by the parties. The final decision of the administrative hearing commission shall be subject to judicial review in the circuit court of the county involved. In the event a valuation of subclass (1) real property within any county with a charter form of government, or within a city not within a county, is made by a computer, computer-assisted method or a computer program, the burden of proof, supported by clear, convincing and cogent evidence to sustain such valuation, shall be on the assessor at any hearing or appeal. In any such county, unless the assessor proves otherwise, there shall be a presumption that the assessment was made by a computer, computer-assisted method or a computer program. Such evidence shall include, but shall not be limited to, the following:

(1) The findings of the assessor based on an appraisal of the property by generally accepted appraisal techniques; and

(2) The purchase prices from sales of at least three comparable properties and the address or location thereof. As used in this **[**paragraph**]** **subdivision**, the word "comparable" means that:

(a) Such sale was closed at a date relevant to the property valuation; and

(b) Such properties are not more than one mile from the site of the disputed property, except where no similar properties exist within one mile of the disputed property, the nearest comparable property shall be used. Such property shall be within five hundred square feet in size

of the disputed property, and resemble the disputed property in age, floor plan, number of rooms, and other relevant characteristics.

2. Assessors in each county of this state and the city of St. Louis may send personal property assessment forms through the mail.

3. The following items of personal property shall each constitute separate subclasses of tangible personal property and shall be assessed and valued for the purposes of taxation at the following percentages of their true value in money:

(1) Grain and other agricultural crops in an unmanufactured condition, one-half of one percent;

(2) Livestock, twelve percent;

(3) Farm machinery, twelve percent;

(4) Motor vehicles which are eligible for registration as and are registered as historic motor vehicles pursuant to section 301.131, RSMo, and aircraft which are at least twenty-five years old and which are used solely for noncommercial purposes and are operated less than fifty hours per year or aircraft that are home built from a kit, five percent;

(5) Poultry, twelve percent; and

(6) Tools and equipment used for pollution control and tools and equipment used in retooling for the purpose of introducing new product lines or used for making improvements to existing products by any company which is located in a state enterprise zone and which is identified by any standard industrial classification number cited in subdivision (6) of section 135.200, RSMo, twenty-five percent.

4. The person listing the property shall enter a true and correct statement of the property, in a printed blank prepared for that purpose. The statement, after being filled out, shall be signed and either affirmed or sworn to as provided in section 137.155. The list shall then be delivered to the assessor.

5. All subclasses of real property, as such subclasses are established in section 4(b) of article X of the Missouri Constitution and defined in section 137.016, shall be assessed at the following percentages of true value:

(1) For real property in subclass (1), nineteen percent;

(2) For real property in subclass (2), twelve percent; and

(3) For real property in subclass (3), thirty-two percent.

6. Manufactured homes, as defined in section 700.010, RSMo, which are actually used as dwelling units shall be assessed at the same percentage of true value as residential real property for the purpose of taxation. The percentage of assessment of true value for such manufactured homes shall be the same as for residential real property. If the county collector cannot identify or find the manufactured home when attempting to attach the manufactured home for payment of taxes owed by the manufactured home owner, the county collector may request the county commission to have the manufactured home removed from the tax books, and such request shall be granted within thirty days after the request is made; however, the removal from the tax books does not remove the tax lien on the manufactured home if it is later identified or found. A manufactured home located in a manufactured home rental park, rental community or on real estate not owned by the manufactured home owner shall be considered personal property. A manufactured home located on real estate owned by the manufactured home owner may be considered real property.

7. Each manufactured home assessed shall be considered a parcel for the purpose of reimbursement pursuant to section 137.750, unless the manufactured home has been converted to real property in compliance with section 700.111, RSMo, and assessed as a realty improvement to the existing real estate parcel.

8. Any amount of tax due and owing based on the assessment of a manufactured home shall be included on the personal property tax statement of the manufactured home owner unless the manufactured home has been converted to real property in compliance with section 700.111, RSMo, in which case the amount of tax due and owing on the assessment of the manufactured

home as a realty improvement to the existing real estate parcel shall be included on the real property tax statement of the real estate owner.

9. The assessor of each county and each city not within a county shall use the trade-in value published in the October issue of the National Automobile Dealers' Association Official Used Car Guide, or its successor publication, as the recommended guide of information for determining the true value of motor vehicles described in such publication. In the absence of a listing for a particular motor vehicle in such publication, the assessor shall use such information or publications which in the assessor's judgment will fairly estimate the true value in money of the motor vehicle.

10. Before the assessor may increase the assessed valuation of any parcel of subclass (1) real property by more than fifteen percent since the last assessment, excluding increases due to new construction or improvements, the assessor shall conduct a physical inspection of such property.

11. If a physical inspection is required, pursuant to subsection 10 of this section, the assessor shall notify the property owner of that fact in writing and shall provide the owner clear written notice of the owner's rights relating to the physical inspection. If a physical inspection is required, the property owner may request that an interior inspection be performed during the physical inspection. The owner shall have no less than thirty days to notify the assessor of a request for an interior physical inspection.

12. A physical inspection, as required by subsection 10 of this section, shall include, but not be limited to, an on-site personal observation and review of all exterior portions of the land and any buildings and improvements to which the inspector has or may reasonably and lawfully gain external access, and shall include an observation and review of the interior of any buildings or improvements on the property upon the timely request of the owner pursuant to subsection 11 of this section. Mere observation of the property via a "drive-by inspection" or the like shall not be considered sufficient to constitute a physical inspection as required by this section.

13. The provisions of subsections 11 and 12 of this section shall only apply in any county with a charter form of government with more than one million inhabitants.

14. A county or city collector may accept credit cards as proper form of payment of outstanding property tax or license due. No county or city collector may charge surcharge for payment by credit card which exceeds the fee or surcharge charged by the credit card bank, processor, or issuer for its service. A county or city collector may accept payment by electronic transfers of funds in payment of any tax or license and charge the person making such payment a fee equal to the fee charged the county by the bank, processor, or issuer of such electronic payment.

15. Any county or city not within a county in this state may, by an affirmative vote of the governing body of such county, opt out of the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session and section 137.073 as modified by **[**this act**]** **house committee substitute for senate substitute for senate committee substitute for senate bill no. 960, ninety-second general assembly, second regular session**, for the next year of the general reassessment, prior to January first of any year. No county or city not within a county shall exercise this opt-out provision after implementing the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session and section 137.073 as modified by **[**this act**]** **house committee substitute for senate substitute for senate committee substitute for senate bill no. 960, ninety-second general assembly, second regular session**, in a year of general reassessment. For the purposes of applying the provisions of this subsection, a political subdivision contained within two or more counties where at least one of such counties has opted out and at least one of such counties has not opted out shall calculate a single tax rate as in effect prior to the enactment of house bill no. 1150 of the ninety-first general assembly, second regular session. A governing body of a city not within a county or a county that has opted out under the

provisions of this subsection may choose to implement the provisions of this section and sections 137.073, 138.060, and 138.100, RSMo, as enacted by house bill no. 1150 of the ninety-first general assembly, second regular session, and section 137.073 as modified by **[**this act**]** **house committee substitute for senate substitute for senate committee substitute for senate bill no. 960, ninety-second general assembly, second regular session**, for the next year of general reassessment, by an affirmative vote of the governing body prior to December thirty-first of any year.

16. The governing body of any city of the third classification with more than twenty-six thousand three hundred but fewer than twenty-six thousand seven hundred inhabitants located in any county that has exercised its authority to opt out under subsection 15 of this section may levy separate and differing tax rates for real and personal property only if such city bills and collects its own property taxes or satisfies the entire cost of the billing and collection of such separate and differing tax rates. Such separate and differing rates shall not exceed such city's tax rate ceiling.

144.057. ALL TANGIBLE PERSONAL PROPERTY ON U.S. MUNITIONS LIST, EXEMPT FROM STATE AND LOCAL SALES AND USE TAX. — In addition to the exemptions granted under this chapter, there shall also be specifically exempted from state and local sales and use taxes defined, levied, or calculated under section 32.085, RSMo, sections 144.010 to 144.525, sections 144.600 to 144.761, or section 238.235, RSMo, all tangible personal property included on the United States munitions list, as provided in 22 CFR 121.1, sold to or purchased by any foreign government or agency or instrumentality of such foreign government which is used for a governmental purpose.

348.436. EXPIRATION DATE. — The provisions of sections 348.430 to 348.436 shall expire December 31, **[**2010**]** **2016**.

353.150. BORROWING OF MONEY AND GIVING OF SECURITY BY CORPORATION. — 1. Any urban redevelopment corporation may borrow funds and secure the repayment thereof by mortgage which shall contain reasonable amortization provisions and shall be a lien upon no other real property except that forming the whole or a part of a single development area.

2. Certificates, bonds and notes, or part interest therein, or any part of an issue thereof, which are secured by a first mortgage on the real property in a development area, or any part thereof, shall be securities in which all the following persons, partnerships, or corporations and public bodies or public officers may legally invest the funds within their control:

(1) Every executor, administrator, trustee, guardian, committee or other person or corporation holding trust funds or acting in a fiduciary capacity;

(2) Persons, partnerships and corporations organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations and trust companies);

(3) The state director of finance as conservator, liquidator or rehabilitator of any such person, partnership or corporation;

(4) Persons, partnerships or corporations organized under or subject to the provisions of the insurance law; fraternal benefit societies; and

(5) The state director of the department of insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation.

3. Any mortgage on the real property in a development area, or any part thereof, may create a first lien, or a second or other junior lien, upon such real property.

4. Any urban redevelopment corporation may sell or otherwise dispose of any or all of the real property acquired by it for the purposes of a redevelopment project. In the event of the sale or other disposition of real property of any urban redevelopment corporation by reason of the foreclosure of any mortgage or other lien, through insolvency or bankruptcy proceedings, by order of any court of competent jurisdiction, by voluntary transfer or otherwise, and the purchaser

of such real property of such redevelopment corporation shall continue to use, operate and maintain such real property in accordance with the provisions of any development plan, the legislative authority of any city affected by the provisions of this chapter, may grant the partial tax relief provided in section 353.110; but if such real property shall be used for a purpose different than that described in the redevelopment plan, or in the event that the purchaser does not desire the property to continue under the redevelopment plan, or if the legislative authority shall refuse to grant the purchaser continuing tax relief, the real property shall be assessed for ad valorem taxes upon the full true value of the real property and may be owned and operated free from any of the conditions, restrictions or provisions of this chapter. **Nothing in this chapter, any development plan, or any contract shall impose a limitation on earnings as a condition to the granting of partial tax relief provided in section 353.110 to a purchaser described in this subsection that is not an urban redevelopment corporation or life insurance company operating as an urban redevelopment corporation.**

5. Any limitation on earnings imposed on any purchaser that is not an urban redevelopment corporation or life insurance company operating as an urban redevelopment corporation under any existing or future redevelopment plan or any existing or future contract shall be void.

447.708. TAX CREDITS, CRITERIA, CONDITIONS — DEFINITIONS. — 1. For eligible projects, the director of the department of economic development, with notice to the directors of the departments of natural resources and revenue, and subject to the other provisions of sections 447.700 to 447.718, may not create a new enterprise zone but may decide that a prospective operator of a facility being remedied and renovated pursuant to sections 447.700 to 447.718 may receive the tax credits and exemptions pursuant to sections 135.100 to 135.150, RSMo, and sections 135.200 to 135.257, RSMo. The tax credits allowed pursuant to this subsection shall be used to offset the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo. For purposes of this subsection:

(1) For receipt of the ad valorem tax abatement pursuant to section 135.215, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs. The city, or county if the eligible project is not located in a city, must provide ad valorem tax abatement of at least fifty percent for a period not less than ten years and not more than twenty-five years;

(2) For receipt of the income tax exemption pursuant to section 135.220, RSMo, and tax credit for new or expanded business facilities pursuant to sections 135.100 to 135.150, and 135.225, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs, or combination thereof. For purposes of sections 447.700 to 447.718, the tax credits described in section 135.225, RSMo, are modified as follows: the tax credit shall be four hundred dollars per employee per year, an additional four hundred dollars per year for each employee exceeding the minimum employment thresholds of ten and twenty-five jobs for new and existing businesses, respectively, an additional four hundred dollars per year for each person who is "a person difficult to employ" as defined by section 135.240, RSMo, and investment tax credits at the same amounts and levels as provided in subdivision (4) of subsection 1 of section 135.225, RSMo;

(3) For eligibility to receive the income tax refund pursuant to section 135.245, RSMo, the eligible project must create at least ten new jobs or retain businesses which supply at least twenty-five existing jobs, or combination thereof, and otherwise comply with the provisions of section 135.245, RSMo, for application and use of the refund and the eligibility requirements of this section;

(4) The eligible project operates in compliance with applicable environmental laws and regulations, including permitting and registration requirements, of this state as well as the federal and local requirements;

(5) The eligible project operator shall file such reports as may be required by the director of economic development or the director's designee;

(6) The taxpayer may claim the state tax credits authorized by this subsection and the state income exemption for a period not in excess of ten consecutive tax years. For the purpose of this section, "taxpayer" means an individual proprietorship, partnership or corporation described in section 143.441 or 143.471, RSMo, who operates an eligible project. The director shall determine the number of years the taxpayer may claim the state tax credits and the state income exemption based on the projected net state economic benefits attributed to the eligible project;

(7) For the purpose of meeting the new job requirement prescribed in subdivisions (1), (2) and (3) of this subsection, it shall be required that at least ten new jobs be created and maintained during the taxpayer's tax period for which the credits are earned, in the case of an eligible project that does not replace a similar facility in Missouri. "New job" means a person who was not previously employed by the taxpayer or related taxpayer within the twelve-month period immediately preceding the time the person was employed by that taxpayer to work at, or in connection with, the eligible project on a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five hours per week during the taxpayer's tax period for which the tax credits are earned. For the purposes of this section, "related taxpayer" has the same meaning as defined in subdivision (9) of section 135.100, RSMo;

(8) For the purpose of meeting the existing job retention requirement, if the eligible project replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, it shall be required that at least twenty-five existing jobs be retained at, and in connection with the eligible project, on a full-time basis during the taxpayer's tax period for which the credits are earned. "Retained job" means a person who was previously employed by the taxpayer or related taxpayer, at a facility similar to the eligible project that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, within the tax period immediately preceding the time the person was employed by the taxpayer to work at, or in connection with, the eligible project on a full-time basis. "Full-time basis" means the employee works an average of at least thirty-five hours per week during the taxpayer's tax period for which the tax credits are earned;

(9) In the case where an eligible project replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, the owner and operator of the eligible project shall provide the director with a written statement explaining the reason for discontinuing operations at the closed facility. The statement shall include a comparison of the activities performed at the closed facility prior to the date the facility ceased operating, to the activities performed at the eligible project, and a detailed account describing the need and rationale for relocating to the eligible project. If the director finds the relocation to the eligible project significantly impaired the economic stability of the area in which the closed facility was located, and that such move was detrimental to the overall economic development efforts of the state, the director may deny the taxpayer's request to claim tax benefits;

(10) Notwithstanding any provision of law to the contrary, for the purpose of this section, the number of new jobs created and maintained, the number of existing jobs retained, and the value of new qualified investment used at the eligible project during any tax year shall be determined by dividing by twelve, in the case of jobs, the sum of the number of individuals employed at the eligible project, or in the case of new qualified investment, the value of new qualified investment used at the eligible project, on the last business day of each full calendar month of the tax year. If the eligible project is in operation for less than the entire tax year, the number of new jobs created and maintained, the number of existing jobs retained, and the value of new qualified investment created at the eligible project during any tax year shall be determined by dividing the sum of the number of individuals employed at the eligible project, or in the case of new qualified investment, the value of new qualified investment used at the eligible project, on the last business day of each full calendar month during the portion of the tax year during

which the eligible project was in operation, by the number of full calendar months during such period;

(11) For the purpose of this section, "new qualified investment" means new business facility investment as defined and as determined in subdivision (7) of section 135.100, RSMo, which is used at and in connection with the eligible project. "New qualified investment" shall not include small tools, supplies and inventory. "Small tools" means tools that are portable and can be hand held.

2. The determination of the director of economic development pursuant to subsection 1 of this section, shall not affect requirements for the prospective purchaser to obtain the approval of the granting of real property tax abatement by the municipal or county government where the eligible project is located.

3. (1) The director of the department of economic development, with the approval of the director of the department of natural resources, may, in addition to the tax credits allowed in subsection 1 of this section, grant a remediation tax credit to the applicant for up to one hundred percent of the costs of materials, supplies, equipment, labor, professional engineering, consulting and architectural fees, permitting fees and expenses, demolition, asbestos abatement, and direct utility charges for performing the voluntary remediation activities for the preexisting hazardous substance contamination and releases, including, but not limited to, the costs of performing operation and maintenance of the remediation equipment at the property beyond the year in which the systems and equipment are built and installed at the eligible project and the costs of performing the voluntary remediation activities over a period not in excess of four tax years following the taxpayer's tax year in which the system and equipment were first put into use at the eligible project, provided the remediation activities are the subject of a plan submitted to, and approved by, the director of natural resources pursuant to sections 260.565 to 260.575, RSMo. **The tax credit may also include up to one hundred percent of the costs of demolition that are not directly part of the remediation activities, provided that the demolition is on the property where the voluntary remediation activities are occurring, the demolition is necessary to accomplish the planned use of the facility where the remediation activities are occurring, and the demolition is part of a redevelopment plan approved by the municipal or county government and the department of economic development. The demolition may occur on an adjacent property if the project is located in a municipality which has a population less than twenty thousand and the above conditions are otherwise met. The adjacent property shall independently qualify as abandoned or underutilized. The amount of the credit available for demolition not associated with remediation can not exceed the total amount of credits approved for remediation including demolition required for remediation.**

(2) **[**The director of the department of economic development, with the approval of the director of the department of natural resources, may, in addition to the tax credits otherwise allowed in this section, grant a demolition tax credit to the applicant for up to one hundred percent of the costs of demolition that are not part of the voluntary remediation activities, provided that the demolition is either on the property where the voluntary remediation activities are occurring or on any adjacent property, and that the demolition is part of a redevelopment plan approved by the municipal or county government and the department of economic development.

(3)**]** The amount of remediation **[**and demolition**]** tax credits issued shall be limited to the least amount necessary to cause the project to occur, as determined by the director of the department of economic development.

[(4)**] (3)** The director may, with the approval of the director of natural resources, extend the tax credits allowed for performing voluntary remediation maintenance activities, in increments of three-year periods, not to exceed five consecutive three-year periods. The tax credits allowed in this subsection shall be used to offset the tax imposed by chapter 143, RSMo, excluding

withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax otherwise imposed by chapter 147, RSMo, or the tax otherwise imposed by chapter 148, RSMo. The remediation **[**and demolition**]** tax credit may be taken in the same tax year in which the tax credits are received or may be taken over a period not to exceed twenty years.

[(5)**] (4)** The project facility shall be projected to create at least ten new jobs or at least twenty-five retained jobs, or a combination thereof, as determined by the department of economic development, to be eligible for tax credits pursuant to this section.

[(6)**] (5)** No more than seventy-five percent of earned remediation tax credits may be issued when the remediation costs were paid, and the remaining percentage may be issued when the department of natural resources issues a "Letter of Completion" letter or covenant not to sue following completion of the voluntary remediation activities. It shall not include any costs associated with ongoing operational environmental compliance of the facility or remediation costs arising out of spills, leaks, or other releases arising out of the ongoing business operations of the facility.

4. In the exercise of the sound discretion of the director of the department of economic development or the director's designee, the tax credits and exemptions described in this section may be terminated, suspended or revoked, if the eligible project fails to continue to meet the conditions set forth in this section. In making such a determination, the director shall consider the severity of the condition violation, actions taken to correct the violation, the frequency of any condition violations and whether the actions exhibit a pattern of conduct by the eligible facility owner and operator. The director shall also consider changes in general economic conditions and the recommendation of the director of the department of natural resources, or his or her designee, concerning the severity, scope, nature, frequency and extent of any violations of the environmental compliance conditions. The taxpayer or person claiming the tax credits or exemptions may appeal the decision regarding termination, suspension or revocation of any tax credit or exemption in accordance with the procedures outlined in subsections 4 to 6 of section 135.250, RSMo. The director of the department of economic development shall notify the directors of the departments of natural resources and revenue of the termination, suspension or revocation of any tax credits as determined in this section or pursuant to the provisions of section 447.716.

5. Notwithstanding any provision of law to the contrary, no taxpayer shall earn the tax credits, exemptions or refund otherwise allowed in subdivisions (2), (3) and (4) of subsection 1 of this section and the tax credits otherwise allowed in section 135.110, RSMo, or the tax credits, exemptions and refund otherwise allowed in sections 135.215, 135.220, 135.225 and 135.245, RSMo, respectively, for the same facility for the same tax period.

6. The total amount of the tax credits allowed in subsection 1 of this section may not exceed the greater of:

(1) That portion of the taxpayer's income attributed to the eligible project; or

(2) One hundred percent of the total business' income tax if the eligible facility does not replace a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the tax credits are earned, and further provided the taxpayer does not operate any other facilities besides the eligible project in Missouri; fifty percent of the total business' income tax if the eligible facility replaces a similar facility that closed elsewhere in Missouri prior to the end of the taxpayer's tax period in which the credits are earned, and further provided the taxpayer does not operate any other facilities besides the eligible project in Missouri; or twenty-five percent of the total business income if the taxpayer operates, in addition to the eligible facility, any other facilities in Missouri. In no case shall a taxpayer operating more than one eligible project in Missouri be allowed to offset more than twenty-five percent of the taxpayer's business income in any tax period. That portion of the taxpayer's income attributed to the eligible project as referenced in subdivision (1) of this subsection, for which the credits allowed in sections 135.110 and 135.225, RSMo, and subsection 3 of this section, may apply, shall be determined in the same manner as prescribed in subdivision (6) of section 135.100, RSMo. That portion of

the taxpayer's franchise tax attributed to the eligible project for which the remediation tax credit may offset, shall be determined in the same manner as prescribed in paragraph (a) of subdivision (6) of section 135.100, RSMo.

7. Taxpayers claiming the state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use. Otherwise, the taxpayer's right to claim such state tax benefits shall be forfeited. Unused business facility and enterprise zone tax credits shall not be carried forward but shall be initially claimed for the tax period during which the eligible project was first capable of being used, and during any applicable subsequent tax periods.

8. Taxpayers claiming the remediation tax credit allowed in subsection 3 of this section shall be required to file all applicable tax credit applications, forms and schedules prescribed by the director during the taxpayer's tax period immediately after the tax period in which the eligible project was first put into use, or during the taxpayer's tax period immediately after the tax period in which the voluntary remediation activities were performed.

9. The recipient of remediation tax credits, for the purpose of this subsection referred to as assignor, may assign, sell or transfer, in whole or in part, the remediation tax credit allowed in subsection 3 of this section, to any other person, for the purpose of this subsection referred to as assignee. To perfect the transfer, the assignor shall provide written notice to the director of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address and the assignee's tax period and the amount of tax credits to be transferred. The number of tax periods during which the assignee may subsequently claim the tax credits shall not exceed twenty tax periods, less the number of tax periods the assignor previously claimed the credits before the transfer occurred.

10. In the case where an operator and assignor of an eligible project has been certified to claim state tax benefits allowed in subdivisions (2) and (3) of subsection 1 of this section, and sells or otherwise transfers title of the eligible project to another taxpayer or assignee who continues the same or substantially similar operations at the eligible project, the director shall allow the assignee to claim the credits for a period of time to be determined by the director; except that, the total number of tax periods the tax credits may be earned by the assignor and the assignee shall not exceed ten. To perfect the transfer, the assignor shall provide written notice to the director of the assignor's intent to transfer the tax credits to the assignee, the date the transfer is effective, the assignee's name, address, and the assignee's tax period, and the amount of tax credits to be transferred.

11. For the purpose of the state tax benefits described in this section, in the case of a corporation described in section 143.471, RSMo, or partnership, in computing Missouri's tax liability, such state benefits shall be allowed to the following:

(1) The shareholders of the corporation described in section 143.471, RSMo;

(2) The partners of the partnership.

The credit provided in this subsection shall be apportioned to the entities described in subdivisions (1) and (2) of this subsection in proportion to their share of ownership on the last day of the taxpayer's tax period.

620.050. COUNCIL CREATED, MEMBERS, APPOINTMENT — REGISTRATION FEE — FUND ESTABLISHED, USE OF MONEYS — COUNCIL DUTIES — RULEMAKING AUTHORITY. — 1. There is hereby created, within the department of economic development, the "Entrepreneurial Development Council". The entrepreneurial development council shall consist of seven members from businesses located within the state and licensed attorneys with specialization in intellectual property matters. All members of the council shall be appointed by the governor with the advice and consent of the senate. The terms of

membership shall be set by the department of economic development by rule as deemed necessary and reasonable. Once the department of economic development has set the terms of membership, such terms shall not be modified and shall apply to all subsequent members.

2. The entrepreneurial development council shall, as provided by department rule, impose a registration fee sufficient to cover costs of the program for entrepreneurs of this state who desire to avail themselves of benefits, provided by the council, to registered entrepreneurs.

3. There is hereby established in the state treasury, the "Entrepreneurial Development and Intellectual Property Right Protection Fund" to be held separate and apart from all other public moneys and funds of the state. The entrepreneurial development and intellectual property right protection fund may accept state and federal appropriations, grants, bequests, gifts, fees and awards to be held for use by the entrepreneurial development council. Notwithstanding provisions of section 33.080, RSMo, to the contrary, moneys remaining in the fund at the end of any biennium shall not revert to general revenue.

4. Upon notification of an alleged infringement of intellectual property rights of a entrepreneur, the entrepreneurial development council shall evaluate such allegations of infringement and may, based upon need, award grants or financial assistance to subsidize legal expenses incurred in instituting legal action necessary to remedy the alleged infringement. Pursuant to rules promulgated by the department, the entrepreneurial development council may allocate moneys from entrepreneurial development and intellectual property right protection fund, in the form of low interest loans and grants, to registered entrepreneurs for the purpose of providing financial aid for product development, manufacturing, and advertising of new products.

5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2008, shall be invalid and void.

620.1878. DEFINITIONS. — For the purposes of sections 620.1875 to 620.1890, the following terms shall mean:

(1) "Approval", a document submitted by the department to the qualified company that states the benefits that may be provided by this program;

(2) "Average wage", the new payroll divided by the number of new jobs;

(3) "Commencement of operations", the starting date for the qualified company's first new employee, which must be no later than twelve months from the date of the approval;

(4) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually. Notwithstanding the provisions of this subdivision to the contrary, for any qualified company that in conjunction with their project is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated;

(5) "Department", the Missouri department of economic development;

(6) "Director", the director of the department of economic development;

(7) "Employee", a person employed by a qualified company;

(8) "Full-time employee", an employee of the qualified company that is scheduled to work an average of at least thirty-five hours per week for a twelve-month period, and one for which the qualified company offers health insurance and pays at least fifty percent of such insurance premiums;

(9) "High-impact project", a qualified company that, within two years from commencement of operations, creates one hundred or more new jobs;

(10) "Local incentives", the present value of the dollar amount of direct benefit received by a qualified company for a project facility from one or more local political subdivisions, but shall not include loans or other funds provided to the qualified company that must be repaid by the qualified company to the political subdivision;

(11) "NAICS", the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group or industry identified in this section shall include its corresponding classification in subsequent federal industry classification systems;

(12) "New direct local revenue", the present value of the dollar amount of direct net new tax revenues of the local political subdivisions likely to be produced by the project over a ten-year period as calculated by the department, excluding local earnings tax, and net new utility revenues, provided the local incentives include a discount or other direct incentives from utilities owned or operated by the political subdivision;

(13) "New investment", the purchase or leasing of new tangible assets to be placed in operation at the project facility, which will be directly related to the new jobs;

(14) "New job", the number of full-time employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time employees at related facilities below the related facility base employment. No job that was created prior to the date of the notice of intent shall be deemed a new job. An employee that spends less than fifty percent of the employee's work time at the facility is still considered to be located at a facility if the employee receives his or her directions and control from that facility, is on the facility's payroll, one hundred percent of the employee's income from such employment is Missouri income, and the employee is paid at or above the state average wage;

(15) "New payroll", the amount of taxable wages of full-time employees, excluding owners, located at the project facility that exceeds the project facility base payroll. If full-time employment at related facilities is below the related facility base employment, any decrease in payroll for full-time employees at the related facilities below that related facility base payroll shall also be subtracted to determine new payroll;

(16) "Notice of intent", a form developed by the department, completed by the qualified company and submitted to the department which states the qualified company's intent to hire new jobs and request benefits under this program;

(17) "Percent of local incentives", the amount of local incentives divided by the amount of new direct local revenue;

(18) "Program", the Missouri quality jobs program provided in sections 620.1875 to 620.1890;

(19) "Project facility", the building used by a qualified company at which the new jobs and new investment will be located. A project facility may include separate buildings that are located within one mile of each other **or within the same county** such that their purpose and operations are interrelated;

(20) "Project facility base employment", the greater of the number of full-time employees located at the project facility on the date of the notice of intent or for the twelve-month period prior to the date of the notice of intent, the average number of full-time employees located at the project facility. In the event the project facility has not been in operation for a full twelve-month

period, the average number of full-time employees for the number of months the project facility has been in operation prior to the date of the notice of intent;

(21) "Project facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at the project facility in the twelve months prior to the notice of intent, not including the payroll of the owners of the qualified company unless the qualified company is participating in an employee stock ownership plan. For purposes of calculating the benefits under this program, the amount of base payroll shall increase each year based on an appropriate measure, as determined by the department;

(22) "Project period", the time period that the benefits are provided to a qualified company;

(23) "Qualified company", a firm, partnership, joint venture, association, private or public corporation whether organized for profit or not, or headquarters of such entity registered to do business in Missouri that is the owner or operator of a project facility, offers health insurance to all full-time employees of all facilities located in this state, and pays at least fifty percent of such insurance premiums. For the purposes of sections 620.1875 to 620.1890, the term "qualified company" shall not include:

(a) Gambling establishments (NAICS industry group 7132);

(b) Retail trade establishments (NAICS sectors 44 and 45);

(c) Food and drinking places (NAICS subsector 722);

(d) Public utilities (NAICS 221 including water and sewer services);

(e) Any company that is delinquent in the payment of any nonprotested taxes or any other amounts due the state or federal government or any other political subdivision of this state;

(f) Any company that has filed for or has publicly announced its intention to file for bankruptcy protection;

(g) Educational services (NAICS sector 61);

(h) Religious organizations (NAICS industry group 8131); **[**or**]**

(i) Public administration (NAICS sector 92)**;**

(j) Ethanol distillation or production; or

(k) Biodiesel production.

Notwithstanding any provision of this section to the contrary, the headquarters or administrative offices of an otherwise excluded business may qualify for benefits if the offices serve a multistate territory. In the event a national, state, or regional headquarters operation is not the predominant activity of a project facility, the new jobs and investment of such headquarters operation is considered eligible for benefits under this section if the other requirements are satisfied;

(24) **"Qualified renewable energy sources" shall not be construed to include ethanol distillation or production or biodiesel production; however, it shall include:**

(a) Open-looped biomass;

(b) Close-looped biomass;

(c) Solar;

(d) Wind;

(e) Geothermal; and

(f) Hydropower;

(25) "Related company" means:

(a) A corporation, partnership, trust, or association controlled by the qualified company;

(b) An individual, corporation, partnership, trust, or association in control of the qualified company; or

(c) Corporations, partnerships, trusts or associations controlled by an individual, corporation, partnership, trust or association in control of the qualified company. As used in this subdivision, control of a corporation shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote, control of a partnership or association shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association, control of a trust shall mean

ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust, and ownership shall be determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

[(25)**] (26)** "Related facility", a facility operated by the qualified company or a related company located in this state that is directly related to the operations of the project facility;

[(26)**] (27)** "Related facility base employment", the greater of the number of full-time employees located at all related facilities on the date of the notice of intent or for the twelve-month period prior to the date of the notice of intent, the average number of full-time employees located at all related facilities of the qualified company or a related company located in this state;

[(27)**] (28)** "Related facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at a related facility in the twelve months prior to the filing of the notice of intent, not including the payroll of the owners of the qualified company unless the qualified company is participating in an employee stock ownership plan. For purposes of calculating the benefits under this program, the amount of related facility base payroll shall increase each year based on an appropriate measure, as determined by the department;

[(28)**] (29)** "Rural area", a county in Missouri with a population less than seventy-five thousand or that does not contain an individual city with a population greater than fifty thousand according to the most recent federal decennial census;

[(29)**] (30)** "Small and expanding business project", a qualified company that within two years of the date of the approval creates a minimum of twenty new jobs if the project facility is located in a rural area or a minimum of forty new jobs if the project facility is not located in a rural area and creates fewer than one hundred new jobs regardless of the location of the project facility;

[(30)**] (31)** "Tax credits", tax credits issued by the department to offset the state income taxes imposed by chapters 143 and 148, RSMo, or which may be sold or refunded as provided for in this program;

[(31)**] (32)** "Technology business project", a qualified company that within two years of the date of the approval creates a minimum of ten new jobs involved in the operations of a **[**technology**]** company**:**

(a) Which is a technology company, as determined by a regulation promulgated by the department under the provisions of section 620.1884 or classified by NAICS codes;

(b) Which owns or leases a facility which produces electricity derived from qualified renewable energy sources, or produces fuel for the generation of electricity from qualified renewable energy sources, but does not include any company that has received the alcohol mixture credit, alcohol credit, or small ethanol producer credit pursuant to 26 U.S.C. Section 40 of the tax code in the previous tax year; or

(c) Which researches, develops, or manufactures power system technology for: aerospace; space; defense; hybrid vehicles; or implantable or wearable medical devices;

[(32)**] (33)** "Withholding tax", the state tax imposed by sections 143.191 to 143.265, RSMo. For purposes of this program, the withholding tax shall be computed using a schedule as determined by the department based on average wages.

620.1881. PROJECT NOTICE OF INTENT, DEPARTMENT TO RESPOND WITH A PROPOSAL OR A REJECTION — BENEFITS AVAILABLE — EFFECT ON WITHHOLDING TAX — PROJECTS ELIGIBLE FOR BENEFITS — ANNUAL REPORT — CAP ON TAX CREDITS — ALLOCATION OF TAX CREDITS. — 1. The department of economic development shall respond within thirty days to a company who provides a notice of intent with either an approval or a rejection of the notice of intent. The department shall give preference to qualified companies and projects targeted at an area of the state which has recently been classified as a disaster area by the federal government. Failure to respond on behalf of the department of economic development shall result in the notice of intent being deemed an approval for the purposes of this section. A

qualified company who is provided an approval for a project shall be allowed a benefit as provided in this program in the amount and duration provided in this section. A qualified company may receive additional periods for subsequent new jobs at the same facility after the full initial period if the minimum thresholds are met as set forth in sections 620.1875 to 620.1890. There is no limit on the number of periods a qualified company may participate in the program, as long as the minimum thresholds are achieved and the qualified company provides the department with the required reporting and is in proper compliance for this program or other state programs. A qualified company may elect to file a notice of intent to start a new project period concurrent with an existing project period if the minimum thresholds are achieved and the qualified company provides the department with the required reporting and is in proper compliance for this program and other state programs; however, the qualified company may not receive any further benefit under the original approval for jobs created after the date of the new notice of intent, and any jobs created before the new notice of intent may not be included as new jobs for the purpose of benefit calculation in relation to the new approval.

2. Notwithstanding any provision of law to the contrary, any qualified company that is awarded benefits under this program may not simultaneously receive tax credits or exemptions under sections 135.100 to 135.150, sections 135.200 to 135.286, section 135.535, or sections 135.900 to 135.906, RSMo, at the same project facility. The benefits available to the company under any other state programs for which the company is eligible and which utilize withholding tax from the new jobs of the company must first be credited to the other state program before the withholding retention level applicable under the Missouri quality jobs act will begin to accrue. These other state programs include, but are not limited to, the new jobs training program under sections 178.892 to 178.896, RSMo, the job retention program under sections 178.760 to 178.764, RSMo, the real property tax increment allocation redevelopment act, sections 99.800 to 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under sections 99.915 to 99.980, RSMo. If any qualified company also participates in the new jobs training program in sections 178.892 to 178.896, RSMo, the company shall retain no withholding tax, but the department shall issue a refundable tax credit for the full amount of benefit allowed under this subdivision. The calendar year annual maximum amount of tax credits which may be issued to a qualifying company that also participates in the new job training program shall be increased by an amount equivalent to the withholding tax retained by that company under the new jobs training program. However, if the combined benefits of the quality jobs program and the new jobs training program exceed the projected state benefit of the project, as determined by the department of economic development through a cost-benefit analysis, the increase in the maximum tax credits shall be limited to the amount that would not cause the combined benefits to exceed the projected state benefit. Any taxpayer who is awarded benefits under this program who knowingly hires individuals who are not allowed to work legally in the United States shall immediately forfeit such benefits and shall repay the state an amount equal to any state tax credits already redeemed and any withholding taxes already retained.

3. The types of projects and the amount of benefits to be provided are:

(1) Small and expanding business projects: in exchange for the consideration provided by the new tax revenues and other economic stimuli that will be generated by the new jobs created by the program, a qualified company may retain an amount equal to the withholding tax as calculated under subdivision (32) of section 620.1878 from the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, for a period of three years from the date the required number of new jobs were created if the average wage of the new payroll equals or exceeds the county average wage or for a period of five years from the date the required number of new jobs were created if the average wage of the new payroll equals or exceeds one hundred twenty percent of the county average wage;

(2) Technology business projects: in exchange for the consideration provided by the new tax revenues and other economic stimuli that will be generated by the new jobs created by the

program, a qualified company may retain an amount equal to a maximum of five percent of new payroll for a period of five years from the date the required number of jobs were created from the withholding tax of the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, if the average wage of the new payroll equals or exceeds the county average wage. An additional one-half percent of new payroll may be added to the five percent maximum if the average wage of the new payroll in any year exceeds one hundred twenty percent of the county average wage in the county in which the project facility is located, plus an additional one-half percent of new payroll may be added if the average wage of the new payroll in any year exceeds one hundred forty percent of the average wage in the county in which the project facility is located. The department shall issue a refundable tax credit for any difference between the amount of benefit allowed under this subdivision and the amount of withholding tax retained by the company, in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified company under this subdivision. The calendar year annual maximum amount of tax credits that may be issued to any qualified company for a project or combination of projects is five hundred thousand dollars;

(3) High impact projects: in exchange for the consideration provided by the new tax revenues and other economic stimuli that will be generated by the new jobs created by the program, a qualified company may retain an amount from the withholding tax of the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, equal to three percent of new payroll for a period of five years from the date the required number of jobs were created if the average wage of the new payroll equals or exceeds the county average wage of the county in which the project facility is located. The percentage of payroll allowed under this subdivision shall be three and one-half percent of new payroll if the average wage of the new payroll in any year exceeds one hundred twenty percent of the county average wage in the county in which the project facility is located. The percentage of payroll allowed under this subdivision shall be four percent of new payroll if the average wage of the new payroll in any year exceeds one hundred forty percent of the county average wage in the county in which the project facility is located. An additional one percent of new payroll may be added to these percentages if local incentives equal between ten percent and twenty-four percent of the new direct local revenue; an additional two percent of new payroll is added to these percentages if the local incentives equal between twenty-five percent and forty-nine percent of the new direct local revenue; or an additional three percent of payroll is added to these percentages if the local incentives equal fifty percent or more of the new direct local revenue. The department shall issue a refundable tax credit for any difference between the amount of benefit allowed under this subdivision and the amount of withholding tax retained by the company, in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified company under this subdivision. The calendar year annual maximum amount of tax credits that may be issued to any qualified company for a project or combination of projects is seven hundred fifty thousand dollars. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a project or combination of projects may be increased up to one million dollars if the number of new jobs will exceed five hundred and if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting the increased limit on behalf of the project;

(4) Job retention projects: a qualified company may receive a tax credit for the retention of jobs in this state, provided the qualified company and the project meets all of the following conditions:

(a) For each of the twenty-four months preceding the year in which application for the program is made the qualified company must have maintained at least one thousand full-time employees at the employer's site in the state at which the jobs are based, and the average wage of such employees must meet or exceed the county average wage;

(b) The qualified company retained at the project facility the level of full-time employees that existed in the taxable year immediately preceding the year in which application for the program is made;

(c) The qualified company is considered to have a significant statewide effect on the economy, and has been determined to represent a substantial risk of relocation from the state by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development;

(d) The qualified company in the project facility will cause to be invested a minimum of seventy million dollars in new investment prior to the end of two years or will cause to be invested a minimum of thirty million dollars in new investment prior to the end of two years and maintain an annual payroll of at least seventy million dollars during each of the years for which a credit is claimed; and

(e) The local taxing entities shall provide local incentives of at least fifty percent of the new direct local revenues created by the project over a ten-year period.

The quality jobs advisory task force may recommend to the department of economic development that appropriate penalties be applied to the company for violating the agreement. The amount of the job retention credit granted may be equal to up to fifty percent of the amount of withholding tax generated by the full-time jobs at the project facility for a period of five years. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a job retention project or combination of job retention projects shall be seven hundred fifty thousand dollars per year, but the maximum amount may be increased up to one million dollars if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting the increased limit on behalf of the job retention project. In no event shall the total amount of all tax credits issued for the entire job retention program under this subdivision exceed three million dollars annually. Notwithstanding the above, no tax credits shall be issued for job retention projects approved by the department after August 30, **[**2007**]** **2013**;

(5) Small business job retention and flood survivor relief: a qualified company may receive a tax credit under sections 620.1875 to 620.1890 for the retention of jobs and flood survivor relief in this state for each job retained over a three-year period, provided that:

(a) The qualified company did not receive any state or federal benefits, incentives, or tax relief or abatement in locating its facility in a flood plain;

(b) The qualified company and related companies have fewer than one hundred employees at the time application for the program is made;

(c) The average wage of the qualified company's and related companies' employees must meet or exceed the county average wage;

(d) All of the qualified company's and related companies' facilities are located in this state;

(e) The facilities at the primary business site in this state have been directly damaged by floodwater rising above the level of a five hundred year flood at least two years, but fewer than eight years, prior to the time application is made;

(f) The qualified company made significant efforts to protect the facilities prior to any impending danger from rising floodwaters;

(g) For each year it receives tax credits under sections 620.1875 to 620.1890, the qualified company and related companies retained, at the company's facilities in this state, at least the level of full-time, year-round employees that existed in the taxable year immediately preceding the year in which application for the program is made; and

(h) In the years it receives tax credits under sections 620.1875 to 620.1890, the company cumulatively invests at least two million dollars in capital improvements in facilities and equipment located at such facilities that are not located within a five hundred year flood plain as designated by the Federal Emergency Management Agency, and amended from time to time.

The amount of the small business job retention and flood survivor relief credit granted may be equal to up to one hundred percent of the amount of withholding tax generated by the full-time jobs at the project facility for a period of three years. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a small business job retention and survivor relief project shall be two hundred fifty thousand dollars per year, but the maximum amount may be increased up to five hundred thousand dollars if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting an increase in the limit on behalf of the small business job retention and flood survivor relief project. In no event shall the total amount of all tax credits issued for the entire small business job retention and flood survivor relief program under this subdivision exceed five hundred thousand dollars annually. Notwithstanding the provisions of this subdivision to the contrary, no tax credits shall be issued for small business job retention and flood survivor relief projects approved by the department after August 30, 2010.

4. The qualified company shall provide an annual report of the number of jobs and such other information as may be required by the department to document the basis for the benefits of this program. The department may withhold the approval of any benefits until it is satisfied that proper documentation has been provided, and shall reduce the benefits to reflect any reduction in full-time employees or new payroll. Upon approval by the department, the qualified company may begin the retention of the withholding taxes when it reaches the minimum number of new jobs and the average wage exceeds the county average wage. Tax credits, if any, may be issued upon satisfaction by the department that the qualified company has exceeded the county average wage and the minimum number of new jobs. In such annual report, if the average wage is below the county average wage, the qualified company has not maintained the employee insurance as required, or if the number of new jobs is below the minimum, the qualified company shall not receive tax credits or retain the withholding tax for the balance of the benefit period. In the case of a qualified company that initially filed a notice of intent and received an approval from the department for high impact benefits and the minimum number of new jobs in an annual report is below the minimum for high impact projects, the company shall not receive tax credits for the balance of the benefit period but may continue to retain the withholding taxes if it otherwise meets the requirements of a small and expanding business under this program.

5. The maximum calendar year annual tax credits issued for the entire program shall not exceed **[**forty**]** **sixty** million dollars. Notwithstanding any provision of law to the contrary, the maximum annual tax credits authorized under section 135.535, RSMo, are hereby reduced from ten million dollars to eight million dollars, with the balance of two million dollars transferred to this program. There shall be no limit on the amount of withholding taxes that may be retained by approved companies under this program.

6. The department shall allocate the annual tax credits based on the date of the approval, reserving such tax credits based on the department's best estimate of new jobs and new payroll of the project, and the other factors in the determination of benefits of this program. However, the annual issuance of tax credits is subject to the annual verification of the actual new payroll.

The allocation of tax credits for the period assigned to a project shall expire if, within two years from the date of commencement of operations, or approval if applicable, the minimum thresholds have not been achieved. The qualified company may retain authorized amounts from the withholding tax under this section once the minimum new jobs thresholds are met for the duration of the project period. No benefits shall be provided under this program until the qualified company meets the minimum new jobs thresholds. In the event the qualified company does not meet the minimum new job threshold, the qualified company may submit a new notice of intent or the department may provide a new approval for a new project of the qualified company at the project facility or other facilities.

7. For a qualified company with flow-through tax treatment to its members, partners, or shareholders, the tax credit shall be allowed to members, partners, or shareholders in proportion to their share of ownership on the last day of the qualified company's tax period.

8. Tax credits may be claimed against taxes otherwise imposed by chapters 143 and 148, RSMo, and may not be carried forward but shall be claimed within one year of the close of the taxable year for which they were issued, except as provided under subdivision (4) of subsection 3 of this section.

9. Tax credits authorized by this section may be transferred, sold, or assigned by filing a notarized endorsement thereof with the department that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the department.

10. Prior to the issuance of tax credits, the department shall verify through the department of revenue, or any other state department, that the tax credit applicant does not owe any delinquent income, sales, or use tax or interest or penalties on such taxes, or any delinquent fees or assessments levied by any state department and through the department of insurance that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that at issuance credits shall be first applied to the delinquency and any amount issued shall be reduced by the applicant's tax delinquency. If the department of revenue or the department of insurance, or any other state department, concludes that a taxpayer is delinquent after June fifteenth but before July first of any year and the application of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the deficiency in which interest, penalties, and additions to tax shall be tolled. After applying all available credits toward a tax delinquency, the administering agency shall notify the appropriate department and that department shall update the amount of outstanding delinquent tax owed by the applicant. If any credits remain after satisfying all insurance, income, sales, and use tax delinquencies, the remaining credits shall be issued to the applicant, subject to the restrictions of other provisions of law.

11. Except as provided under subdivision (4) of subsection 3 of this section, the director of revenue shall issue a refund to the qualified company to the extent that the amount of credits allowed in this section exceeds the amount of the qualified company's income tax.

12. An employee of a qualified company will receive full credit for the amount of tax withheld as provided in section 143.211, RSMo.

13. If any provision of sections 620.1875 to 620.1890 or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of these sections which can be given effect without the invalid provisions or application, and to this end, the provisions of sections 620.1875 to 620.1890 are hereby declared severable.

[135.348. TAX CREDIT FOR SPONSORSHIP AND MENTORING PROGRAM. — 1. As used in this section, the following terms mean:

(1) "Approved program", a sponsorship and mentoring program established pursuant to this section and approved by the department of elementary and secondary education;

(2) "Eligible student", a resident pupil of a school district who is determined by the local school board to be eligible to participate in a sponsorship and mentoring program pursuant to this section and who participates in such program for no less than eight calendar months in the tax year for which a return is filed claiming a credit authorized in this section;

(3) "Net expenditures", only those amounts paid or incurred for the participation of an eligible student participating in an approved sponsorship and mentoring program less any amounts received by the qualified taxpayer from any source for the provision of a sponsorship and mentoring program for an eligible student;

(4) "Qualified taxpayer", an employer who makes expenditures pursuant to this section.

2. For taxable years commencing on or after January 1, 1998, a qualified taxpayer shall be allowed a credit against the tax imposed by chapter 143, RSMo, exclusive of the provisions relating to the withholding of tax as provided in sections 143.191 to 143.265, RSMo, to the extent of the lesser of two thousand dollars times the number of eligible students for which the qualified taxpayer is allowed a credit pursuant to this section or the net expenditures made directly or through a fund during a taxable year by the qualified taxpayer for the participation of an eligible student in an approved sponsorship and mentoring program established pursuant to this section. No credit shall be allowed for any amounts for which any other credit is claimed or allowed under any other provision of state law for the same net expenditures.

3. The tax credit allowed by this section shall be claimed by the qualified taxpayer at the time such taxpayer files a return and shall be applied against the income tax liability imposed by chapter 143, RSMo, after all other credits provided by law have been applied. Where the amount of the credit exceeds the tax liability, the difference between the credit and the tax liability shall not be refundable but may be carried forward to any of the taxpayer's four subsequent taxable years.

4. The department of elementary and secondary education shall establish, by rule, guidelines and criteria for approval of sponsorship and mentoring programs established by school districts and for determining the eligibility of students for participation in sponsorship and mentoring programs established pursuant to this section. Such determinations for eligibility of students shall be based upon a definition of an at-risk student as established by the department by rule.

5. A local school board may establish a sponsorship and mentoring program and apply to the department of elementary and secondary education for approval of such program. A tax credit may only be received pursuant to this section for expenditures for sponsorship and mentoring programs approved by the department. The school board of each district which has an approved program shall annually certify to the department of elementary and secondary education the number of eligible students participating in the program. The principal of any school in a district which has an approved program may recommend, to the local school board, those students who do not meet the definition of "at-risk" students established pursuant to this section, and the school board may submit the names of such students and the circumstances which justify the student's participation in an approved program to the department of elementary and secondary education for approval of such student's participation. If approved by the department, such students shall be considered eligible students for participation in an approved program.

6. The department of elementary and secondary education shall provide written notification to the department of revenue of each eligible student participating in an approved program pursuant to this section, the student's school district, the name of the qualified taxpayer approved to receive a tax credit on the basis of such eligible student's participation in an approved program pursuant to this section and the amount of such credit as determined in subsection 2 of this section. This section is subject to appropriations.]

[260.285. MANUFACTURER RECYCLING FLEXIBLE CELLULOSE CASING ELIGIBLE FOR TAX CREDIT — CLAIM PROCEDURE — FRAUDULENT CLAIM, PENALTY. — 1. Any

manufacturer engaged in this state in production of a meat or poultry food product intended for human consumption that is recycling flexible cellulose casing manufactured from cotton linters used and consumed directly in the production of such food product shall be eligible for a credit as defined in subsection 2 of this section. For purposes of this section, "cotton linters" means fibers from any plant or wood pulp material used for the creation of flexible cellulose casings.

2. The credit authorized in subsection 1 shall be equal to the amount of state sales or use taxes paid by a manufacturer to a retailer on such packaging material which is subsequently recycled by either the manufacturer or other person or entity to which the manufacturer conveys such packaging materials, less any consideration received by the manufacturer for such conveyance.

3. A manufacturer shall claim the refund in the month following the month in which the material has been recycled or conveyed for recycling. When claiming a credit pursuant to this section, a manufacturer shall provide a detailed accounting of the amount of packaging material recycled, amount of sales or use tax paid on such material, an affidavit attesting that the manufacturer is eligible pursuant to the provisions of this section for the credit being claimed, documentation that the activity constitutes recycling as certified by the director of the department of natural resources and any other documentation determined necessary by the director of the department of revenue. The director shall refund any valid credit claims within sixty days of receipt. If the director determines that a fraudulent claim for the credit has been filed, the director may assess a penalty in an amount not to exceed twice the amount of fraudulent credits claimed.

4. Payment of credits authorized by this section shall not alter the liability of a retailer regarding sales tax on such material. Credits authorized by this section shall be paid from funds appropriated for the refund of taxes.]

Approved June 11, 2008

HB 2065 [SCS HB 2065]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Repeals the reciprocity provision for a licensed or certified psychologist in another state and allows for the destruction of the records of meritless claims against psychologists by certain persons

AN ACT to repeal sections 337.029 and 337.068, RSMo, and to enact in lieu thereof two new sections relating to the state committee of psychologists.

SECTION
A. Enacting clause.
337.029. Licenses based on reciprocity to be issued, when — health service provider certification eligibility.
337.068. Complaints of prisoners — disposition of certain records.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 337.029 and 337.068, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 337.029 and 337.068, to read as follows:

337.029. LICENSES BASED ON RECIPROCITY TO BE ISSUED, WHEN — HEALTH SERVICE PROVIDER CERTIFICATION ELIGIBILITY. — 1. A psychologist licensed in another jurisdiction who has had no violations and no suspensions and no revocation of a license to practice

psychology in any jurisdiction may receive a license in Missouri, provided the psychologist passes a written examination on Missouri laws and regulations governing the practice of psychology and meets one of the following criteria:

(1) Is a diplomate of the American Board of Professional Psychology;

(2) Is a member of the National Register of Health Service Providers in Psychology;

(3) Is currently licensed or certified as a psychologist in another jurisdiction who is then a signatory to the Association of State and Provincial Psychology Board's reciprocity agreement;

(4) Is currently licensed or certified as a psychologist in another state, territory of the United States, or the District of Columbia and:

(a) Has a doctoral degree in psychology from a program accredited, or provisionally accredited, by the American Psychological Association or that meets the requirements as set forth in subdivision (3) of subsection 3 of section 337.025;

(b) Has been licensed for the preceding five years; and

(c) Has had no disciplinary action taken against the license for the preceding five years; **or**

(5) **[**Is currently licensed or certified as a psychologist in a state, territory of the United States, or the District of Columbia that extends like privileges for reciprocal licensing or certification to persons licensed by this state with similar qualifications; or

(6)**]** Holds a current certificate of professional qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB).

2. Notwithstanding the provisions of subsection 1 of this section, applicants may be required to pass an oral examination as adopted by the committee.

3. A psychologist who receives a license for the practice of psychology in the state of Missouri on the basis of reciprocity as listed in subsection 1 of this section or by endorsement of the score from the examination of professional practice in psychology score will also be eligible for and shall receive certification from the committee as a health service provider if the psychologist meets one or more of the following criteria:

(1) Is a diplomate of the American Board of Professional Psychology in one or more of the specialties recognized by the American Board of Professional Psychology as pertaining to health service delivery;

(2) Is a member of the National Register of Health Service Providers in Psychology; or

(3) Has completed or obtained through education, training, or experience the requisite knowledge comparable to that which is required pursuant to section 337.033.

337.068. COMPLAINTS OF PRISONERS — DISPOSITION OF CERTAIN RECORDS. — 1. If the board finds merit to a complaint by an individual incarcerated or under the care and control of the department of corrections **or who has been ordered to be taken into custody, detained, or held under sections 632.480 to 632.513, RSMo,** and takes further investigative action, no documentation may appear on file or disciplinary action may be taken in regards to the licensee's license unless the provisions of subsection 2 of section 337.035 have been violated. Any case file documentation that does not result in the board filing an action pursuant to subsection 2 of section 337.035 shall be destroyed within three months after the final case disposition by the board. No notification to any other licensing board in another state or any national registry regarding any investigative action shall be made unless the provisions of subsection 2 of section 337.035 have been violated.

2. Upon written request of the psychologist subject to a complaint, prior to August 28, 1999, by an individual incarcerated or under the care and control of the department of corrections **or prior to August 28, 2008, by an individual who has been ordered to be taken into custody, detained, or held under sections 632.480 to 632.513, RSMo,** that did not result in the board filing an action pursuant to subsection 2 of section 337.035, the board and the division of professional registration, shall in a timely fashion:

(1) Destroy all documentation regarding the complaint;

(2) Notify any other licensing board in another state or any national registry regarding the board's actions if they have been previously notified of the complaint; and

(3) Send a letter to the licensee that clearly states that the board found the complaint to be unsubstantiated, that the board has taken the requested action, and notify the licensee of the provisions of subsection 3 of this section.

3. Any person who has been the subject of an unsubstantiated complaint as provided in subsection 1 or 2 of this section shall not be required to disclose the existence of such complaint in subsequent applications or representations relating to their psychology professions.

Approved June 19, 2008

HB 2188 [SCS HCS HB 2188]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Creates civil and criminal penalties for individuals committing mortgage fraud and imposes sanctions upon certain licensed and unlicensed persons who commit the crime

AN ACT to repeal sections 339.100, 339.532, 443.809, 443.810, and 443.891, RSMo, and to enact in lieu thereof nine new sections relating to mortgage fraud, with penalty provisions.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 339.100, 339.532, 443.809, 443.810, and 443.891, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 339.100, 339.175, 339.532, 339.543, 443.809, 443.810, 443.891, 443.930, and 570.310, to read as follows:

339.100. INVESTIGATION OF CERTAIN PRACTICES, PROCEDURE — SUBPOENAS — FORMAL COMPLAINTS — REVOCATION OR SUSPENSION OF LICENSES — DIGEST MAY BE PUBLISHED — REVOCATION OF LICENSES FOR CERTAIN OFFENSES. — 1. The commission may, upon its own motion, and shall upon receipt of a written complaint filed by any person, investigate any real estate-related activity of a licensee licensed under sections 339.010 to 339.180 and sections 339.710 to 339.860 or an individual or entity acting as or representing themselves as a real estate licensee. In conducting such investigation, if the questioned activity or written complaint involves an affiliated licensee, the commission may forward a copy of the information received to the affiliated licensee's designated broker. The commission shall have the power to hold an investigatory hearing to determine whether there is a probability of a

violation of sections 339.010 to 339.180 and sections 339.710 to 339.860. The commission shall have the power to issue a subpoena to compel the production of records and papers bearing on the complaint. The commission shall have the power to issue a subpoena and to compel any person in this state to come before the commission to offer testimony or any material specified in the subpoena. Subpoenas and subpoenas duces tecum issued pursuant to this section shall be served in the same manner as subpoenas in a criminal case. The fees and mileage of witnesses shall be the same as that allowed in the circuit court in civil cases.

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(5) Failure to timely deliver a duplicate original of any and all instruments to any party or parties executing the same where the instruments have been prepared by the licensee or under his or her supervision or are within his or her control, including, but not limited to, the instruments relating to the employment of the licensee or to any matter pertaining to the consummation of a lease, listing agreement or the purchase, sale, exchange or lease of property, or any type of real estate transaction in which he or she may participate as a licensee;

(6) Acting for more than one party in a transaction without the knowledge of all parties for whom he or she acts, or accepting a commission or valuable consideration for services from more than one party in a real estate transaction without the knowledge of all parties to the transaction;

(7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860;

(8) Guaranteeing or having authorized or permitted any licensee to guarantee future profits which may result from the resale of real property;

(9) Having been finally adjudicated and been found guilty of the violation of any state or federal statute which governs the sale or rental of real property or the conduct of the real estate business as defined in subsection 1 of section 339.010;

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

(11) Representing a real estate broker other than the broker with whom associated without the express written consent of the broker with whom associated;

(12) Accepting a commission or valuable consideration for the performance of any of the acts referred to in section 339.010 from any person except the broker with whom associated at the time the commission or valuable consideration was earned;

(13) Using prizes, money, gifts or other valuable consideration as inducement to secure customers or clients to purchase, lease, sell or list property when the awarding of such prizes, money, gifts or other valuable consideration is conditioned upon the purchase, lease, sale or

listing; or soliciting, selling or offering for sale real property by offering free lots, or conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Placing a sign on or advertising any property offering it for sale or rent without the written consent of the owner or his or her duly authorized agent;

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(17) Failure to timely inform seller of all written offers unless otherwise instructed in writing by the seller;

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

(20) Disciplinary action against the holder of a license or other right to practice any profession regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 granted by another state, territory, federal agency, or country upon grounds for which revocation, suspension, or probation is authorized in this state;

(21) Been found by a court of competent jurisdiction of having used any controlled substance, as defined in chapter 195, RSMo, to the extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 339.010 to 339.180 and sections 339.710 to 339.860;

(22) Been finally adjudged insane or incompetent by a court of competent jurisdiction;

(23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860;

(24) Use of any advertisement or solicitation which is knowingly false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed**;**

(25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section, "material" means important information about which the commission should be informed and which may influence a licensing decision;

(26) Engaging in, committing, or assisting any person in engaging in or committing mortgage fraud, as defined in section 443.930, RSMo.

3. After the filing of such complaint, the proceedings will be conducted in accordance with the provisions of law relating to the administrative hearing commission. A finding of the administrative hearing commissioner that the licensee has performed or attempted to perform one or more of the foregoing acts shall be grounds for the suspension or revocation of his license by the commission, or the placing of the licensee on probation on such terms and conditions as the real estate commission shall deem appropriate, or the imposition of a civil penalty by the commission not to exceed two thousand five hundred dollars for each offense. Each day of a continued violation shall constitute a separate offense.

4. The commission may prepare a digest of the decisions of the administrative hearing commission which concern complaints against licensed brokers or salespersons and cause such digests to be mailed to all licensees periodically. Such digests may also contain reports as to new or changed rules adopted by the commission and other information of significance to licensees.

5. Notwithstanding other provisions of this section, a broker or salesperson's license shall be revoked, or in the case of an applicant, shall not be issued, if the licensee or applicant has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of any of the following offenses or offenses of a similar nature established under the laws of this, any other state, the United States, or any other country, notwithstanding whether sentence is imposed:

(1) Any dangerous felony as defined under section 556.061, RSMo, or murder in the first degree;

(2) Any of the following sexual offenses: rape, statutory rape in the first degree, statutory rape in the second degree, sexual assault, forcible sodomy, statutory sodomy in the first degree, statutory sodomy in the second degree, child molestation in the first degree, child molestation in the second degree, deviate sexual assault, sexual misconduct involving a child, sexual misconduct in the first degree, sexual abuse, enticement of a child, or attempting to entice a child;

(3) Any of the following offenses against the family and related offenses: incest, abandonment of a child in the first degree, abandonment of a child in the second degree, endangering the welfare of a child in the first degree, abuse of a child, using a child in a sexual performance, promoting sexual performance by a child, or trafficking in children; **[**and**]**

(4) Any of the following offenses involving child pornography and related offenses: promoting obscenity in the first degree, promoting obscenity in the second degree when the penalty is enhanced to a class D felony, promoting child pornography in the first degree, promoting child pornography in the second degree, possession of child pornography in the first degree, possession of child pornography in the second degree, furnishing child pornography to a minor, furnishing pornographic materials to minors, or coercing acceptance of obscene material**; and**

(5) Mortgage fraud as defined in section 570.310, RSMo.

6. A person whose license was revoked under subsection 5 of this section may appeal such revocation to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of revocation. Failure of a person whose license was revoked to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the revocation. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission.

339.175. MORTGAGE FRAUD, COMMISSION MAY FILE COURT ACTION — CIVIL PENALTY — INVESTIGATION AUTHORITY. — 1. If the commission believes that a real estate broker or real estate sales person has engaged in, is engaging in, or has willfully taken a substantial step toward engaging in an act, practice, omission, or course of business constituting mortgage fraud, as defined in section 443.930, RSMo, or that a person has materially aided or is materially aiding any such act, practice, omission, course of business, the commission may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the person. Upon a proper showing, the court may issue a permanent or temporary injunction, restraining order, or declaratory judgment.

2. The court may impose a civil penalty against the person not to exceed two thousand five hundred dollars for each violation and may grant any other relief the court determines is just and proper under the circumstances including, but not limited to, a temporary suspension of any license issued by the commission.

3. The commission may initiate an investigation and take all measures necessary to find the facts of any potential violation of this section, including issuing subpoenas to compel the attendance and testimony of witnesses and the production of documents and

other evidence. The commission may conduct joint investigations, enter into confidentiality agreements and share information obtained relating to an investigation under this section with other governmental agencies.

4. The enforcement authority of the commission under this section is cumulative to any other statutory authority of the commission.

339.532. REFUSAL TO ISSUE OR RENEW CERTIFICATE OR LICENSE, PROCEDURE, HEARING, GROUNDS FOR REFUSAL, PENALTIES — REVOCATION, WHEN, APPEAL — RECERTIFICATION OR RELICENSURE, EXAMINATION REQUIRED. — 1. The commission may refuse to issue or renew any certificate or license issued pursuant to sections 339.500 to 339.549 for one or any combination of causes stated in subsection 2 of this section. The commission shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

(1) Procuring or attempting to procure a certificate or license pursuant to section 339.513 by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification or licensure, or through any form of fraud or misrepresentation;

(2) Failing to meet the minimum qualifications for certification or licensure or renewal established by sections 339.500 to 339.549;

(3) Paying money or other valuable consideration, other than as provided for by section 339.513, to any member or employee of the commission to procure a certificate or license pursuant to sections 339.500 to 339.549;

(4) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 339.500 to 339.549 for any offense of which an essential element is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

(11) Accepting an appraisal assignment when the employment itself is contingent upon the appraiser's reporting a predetermined analysis or opinion or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment;

(12) Violating the confidential nature of governmental records to which the person gained access through employment or engagement to perform an appraisal assignment or specialized appraisal services for a governmental agency;

(13) Violating any term or condition of a certificate or license issued by the commission pursuant to the authority of sections 339.500 to 339.549;

(14) Violation of any professional trust or confidence;

(15) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(16) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by sections 339.500 to 339.549 who is not licensed or certified and currently eligible to practice pursuant to sections 339.500 to 339.549;

(17) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(18) Disciplinary action against the holder of a license, certificate or other right to practice any profession regulated pursuant to sections 339.500 to 339.549, imposed by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state**;**

(19) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or certification, or for license or certification renewal. As used in this section, "material" means important information about which the commission should be informed and which may influence a licensing decision;

(20) Engaging in or committing, or assisting any person in engaging in or committing, any practice or act of mortgage fraud, as defined in section 443.930, RSMo.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the commission may, singly or in combination, publicly censure or place the person named in the complaint on probation on such terms and conditions as the commission deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke, the certificate or license. The holder of a certificate or license revoked pursuant to this section may not obtain certification as a state-certified real estate appraiser or licensure as a state-licensed real estate appraiser for at least five years after the date of revocation.

4. **Notwithstanding other provisions of this section, a real estate appraiser license or certification shall be revoked, or in the case of an applicant, shall not be issued, if the licensee or applicant has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of mortgage fraud as defined in section 570.310, RSMo. The commission shall notify the individual of the reasons for the revocation in writing, by certified mail.**

5. A person whose license is revoked under subsection 4 of this section may appeal such revocation to the administrative hearing commission, as provided by chapter 621, within ninety days from the time the commission mails the notice of revocation. A person who fails to do so waives all rights to appeal the revocation.

6. A certification of a state-certified real estate appraiser or a license of a state-licensed real estate appraiser that has been suspended as a result of disciplinary action by the commission shall not be reinstated, and a person may not obtain certification as a state-certified real estate appraiser or licensure as a state-licensed real estate appraiser subsequent to revocation, unless the applicant presents evidence of completion of the continuing education required by section 339.530 during the period of suspension or revocation as well as fulfillment of any other conditions imposed by the commission. Applicants for recertification, relicensure or reinstatement also shall be required to successfully complete the examination for original certification or licensure required by section 339.515 as a condition to reinstatement of certification or licensure, or recertification or relicensure subsequent to revocation.

339.543. MORTGAGE FRAUD, COMMISSION MAY FILE COURT ACTION — CIVIL PENALTY — INVESTIGATION AUTHORITY. — 1. If the commission believes that an appraiser has engaged in, is engaging in, or has willfully taken a substantial step toward engaging in an act, practice, omission, or course of business constituting mortgage fraud, as defined in section 443.930, RSMo, or that a person has materially aided or is materially aiding any such act, practice, omission, or course of business, the commission may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the person. Upon a proper showing, the court may issue a permanent or temporary injunction, restraining order, or declaratory judgment.

2. The court may impose a civil penalty against the person not to exceed two thousand five hundred dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances including, but not limited to, a temporary suspension of any license issued by the commission.

3. The commission may initiate an investigation and take all measures necessary to find the facts of any potential violation of this section, including issuing subpoenas to compel the attendance and testimony of witnesses and the production of documents and other evidence. The commission may conduct joint investigations, enter into confidentiality agreements, and share information obtained relating to an investigation under this section with other governmental agencies.

4. The enforcement authority of the commission under this section is cumulative to any other statutory authority of the commission.

443.809. EXAMINATION, POWERS OF DIRECTOR TO INSPECT RECORDS OF LICENSED PERSONS. — **[**When the director has reasonable cause to believe that any person has not submitted an application for licensure and is conducting any of the activities described in subsection 1 of section 443.805, the director may examine all books and records of the person and any additional documentation necessary to determine whether such person is required to be licensed pursuant to sections 443.800 to 443.893.**] The director shall have the authority, at any time and as often as reasonably necessary, to investigate or examine the books and records of any licensed person to assure compliance with sections 443.800 to 443.893. The director shall have the right to examine under oath, all persons whose testimony may be required relative to the business of any person being examined or investigated under sections 443.800 to 443.893. The director shall have free and immediate access to any licensed person's places of business and to all books and records related to the licensed business.**

443.810. PENALTY FOR VIOLATIONS. — Effective May 21, 1998, any person who violates any provision of sections 443.805 to 443.812 shall be deemed guilty of a class C felony. **In addition, in any contested case proceeding, the director or board may assess a civil penalty of up to five thousand dollars per violation for any violation of any of the provisions of sections 443.800 to 443.893.**

443.891. CHARGE IN SUPPORT OF REMOVAL OR PROHIBITION NOTICE ISSUED ON CERTAIN FINDINGS OF CONDUCT. — 1. Upon making any one or more of the following **preliminary** findings, the director may issue a notice of **[**intent to issue an order**] charges in support** of **[**removal or prohibition, or**]** an order of removal and prohibition, which order may remove **and prohibit** a named person**[**, persons**]** or entity **[**or entities**]** from participating in **loan brokering, mortgage brokering or mortgage brokerage service for any loan secured by real estate whether in the affairs of an exempt entity or in** the affairs of one or more licensees **[**and may be permanent or for a specific shorter period of time**] under sections 443.800 to 443.893, or in the affairs of any financial institution under the jurisdiction of the director.**

An order of removal or of prohibition may be permanent or for a specific term and may impose additional conditions including requiring restitution and imposition of a civil penalty not exceeding five thousand dollars per occurrence. The findings required by this section may be any one or more of the following:

(1) A finding that the **[**part**]** **person** or entity subject to the order has been convicted of a crime involving material financial loss to a licensee, a federally insured depository institution, a government-sponsored enterprise, a Federal Home Loan Bank, a Federal Reserve Bank or any other person;

(2) A finding that the person or entity subject to the order has **[**submitted, or caused to be submitted, any document that contains multiple willful and material misstatements of facts and includes the signature of the person or entity specified in the director's order or that is notarized, certified, verified or is in any other way attested to as to the document's veracity. An application for licensure or license renewal may be considered such a document.**], in connection with the application for or procurement of a loan secured by real estate, made any material misstatement, misrepresentation, or omission. As used in this section, "material" means important information about which the board should be informed and which may influence a licensing or lending decision;**

(3) A finding that the person subject to the order has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of mortgage fraud as defined in section 570.310, RSMo.

2. If a hearing is requested, the director or his or her designee shall conduct a hearing under chapter 536, RSMo.

3. If the respondent defaults, consents to an order of removal and prohibition, or if upon the record the director finds the grounds specified supporting a removal and prohibition are established, the director may issue such an order including conditions for restitution or for a civil penalty not to exceed five thousand dollars per occurrence to be effective thirty days after service and to remain in effect and enforceable except to the extent it is stayed, modified, terminated or set aside by action of the director or a reviewing court.

443.930. PROHIBITED ACTS — CONSTITUTES MORTGAGE FRAUD — NO PRIVATE RIGHT OF ACTION CREATED. — 1. It is unlawful for a person, in connection with the application for or procurement of a loan secured by real estate to:

(1) Employ a device, scheme, or artifice to defraud;

(2) Make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Receive any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with a real estate closing that such person knew involved a violation of this section; or

(4) Influence, through extortion or bribery, the development, reporting, result, or review of a real estate appraisal, except that this subsection does not prohibit a mortgage lender, mortgage broker, mortgage banker, real estate licensee, or other person from asking the appraiser to do one or more of the following:

(a) Consider additional property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice.

2. Such acts shall be deemed to constitute mortgage fraud.

3. This section shall not be construed to create a private right of action.

570.310. PROHIBITED ACTS — CONSTITUTES MORTGAGE FRAUD — VENUE, WHERE — ACTS NOT PRECLUDED BY PROSECUTION. — 1. It is unlawful for a person, in connection with the application for or procurement of a loan secured by real estate to willfully:

(1) Employ a device, scheme, or artifice to defraud;

(2) Make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Receive any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with a real estate closing that such person knew involved a violation of this section; or

(4) Influence, through extortion or bribery, the development, reporting, result, or review of a real estate appraisal, except that this subsection does not prohibit a mortgage lender, mortgage broker, mortgage banker, real estate licensee, or other person from asking the appraiser to do one or more of the following:

(a) Consider additional property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice.

2. Such acts shall be deemed to constitute mortgage fraud.

3. Mortgage fraud is a class C felony.

4. Each transaction in violation of this section shall constitute a separate offense.

5. Venue over any dispute relating to mortgage fraud or a conspiracy or endeavor to engage in or participate in a pattern of mortgage fraud shall be:

(1) In the county in which the real estate is located;

(2) In the county in which any act was performed in furtherance of mortgage fraud;

(3) In any county in which any person alleged to have violated this section had control or possession of any proceeds from mortgage fraud;

(4) In any county in which a related real estate closing occurred; or

(5) In any county in which any document related to a mortgage fraud is filed with the recorder of deeds.

6. Prosecution under the provisions of this section shall not preclude:

(1) The power of this state to punish a person for conduct that constitutes a crime under other laws of this state;

(2) A civil action by any person;

(3) Administrative or disciplinary action by the state or the United States or by any agency of the state or the United States;

(4) A civil forfeiture action; or

(5) An action under chapter 407, RSMo.

Approved June 11, 2008

HB 2191 [SS SCS HB 2191]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Clarifies that a school district may participate in the A+ Schools Program regardless of its accreditation status by the State Board of Education if the district meets all other requirements

AN ACT to repeal sections 160.545, 173.256, and 173.258, RSMo, and to enact in lieu thereof three new sections relating to higher education scholarships.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 160.545, 173.256, and 173.258, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 160.545, 173.256, and 173.258, to read as follows:

160.545. A+ SCHOOL PROGRAM ESTABLISHED — PURPOSE — RULES — VARIABLE FUND MATCH REQUIREMENT — WAIVER OF RULES AND REGULATIONS, REQUIREMENT — REIMBURSEMENT FOR HIGHER EDUCATION COSTS FOR STUDENTS — EVALUATION — REIMBURSEMENT FOR TWO-YEAR SCHOOLS. — 1. There is hereby established within the department of elementary and secondary education the "A+ Schools Program" to be administered by the commissioner of education. The program shall consist of grant awards made to public secondary schools that demonstrate a commitment to ensure that:

(1) All students be graduated from school;

(2) All students complete a selection of high school studies that is challenging and for which there are identified learning expectations; and

(3) All students proceed from high school graduation to a college or postsecondary vocational or technical school or high-wage job with work place skill development opportunities.

2. The state board of education shall promulgate rules and regulations for the approval of grants made under the program to schools that:

(1) Establish measurable districtwide performance standards for the goals of the program outlined in subsection 1 of this section; and

(2) Specify the knowledge, skills and competencies, in measurable terms, that students must demonstrate to successfully complete any individual course offered by the school, and any course of studies which will qualify a student for graduation from the school; and

(3) Do not offer a general track of courses that, upon completion, can lead to a high school diploma; and

(4) Require rigorous coursework with standards of competency in basic academic subjects for students pursuing vocational and technical education as prescribed by rule and regulation of the state board of education; and

(5) Have a partnership plan developed in cooperation and with the advice of local business persons, labor leaders, parents, and representatives of college and postsecondary vocational and technical school representatives, with the plan then approved by the local board of education. The plan shall specify a mechanism to receive information on an annual basis from those who developed the plan in addition to senior citizens, community leaders, and teachers to update the plan in order to best meet the goals of the program as provided in subsection 1 of this section. Further, the plan shall detail the procedures used in the school to identify students that may drop out of school and the intervention services to be used to meet the needs of such students. The plan shall outline counseling and mentoring services provided to students who will enter the work force upon graduation from high school, address apprenticeship and intern programs, and shall contain procedures for the recruitment of volunteers from the community of the school to serve in schools receiving program grants.

3. **A school district may participate in the program irrespective of its accreditation classification by the state board of education, provided it meets all other requirements.**

4. By rule and regulation, the state board of education may determine a local school district variable fund match requirement in order for a school or schools in the district to receive a grant under the program. However, no school in any district shall receive a grant under the program unless the district designates a salaried employee to serve as the program coordinator, with the district assuming a minimum of one-half the cost of the salary and other benefits provided to the coordinator. Further, no school in any district shall receive a grant under the program unless the district makes available facilities and services for adult literacy training as specified by rule of the state board of education.

[4.**] 5.** For any school that meets the requirements for the approval of the grants authorized by this section and specified in subsection 2 of this section for three successive school years, by August first following the third such school year, the commissioner of education shall present a plan to the superintendent of the school district in which such school is located for the waiver of rules and regulations to promote flexibility in the operations of the school and to enhance and encourage efficiency in the delivery of instructional services in the school. The provisions of other law to the contrary notwithstanding, the plan presented to the superintendent shall provide a summary waiver, with no conditions, for the pupil testing requirements pursuant to section 160.257 in the school. Further, the provisions of other law to the contrary notwithstanding, the plan shall detail a means for the waiver of requirements otherwise imposed on the school related to the authority of the state board of education to classify school districts pursuant to subdivision (9) of section 161.092, RSMo, and such other rules and regulations as determined by the commissioner of education, except such waivers shall be confined to the school and not other schools in the school district unless such other schools meet the requirements of this subsection. However, any waiver provided to any school as outlined in this subsection shall be void on June thirtieth of any school year in which the school fails to meet the requirements for the approval of the grants authorized by this section as specified in subsection 2 of this section.

[5.**] 6.** For any school year, grants authorized by subsections 1 to 3 of this section shall be funded with the amount appropriated for this program, less those funds necessary to reimburse eligible students pursuant to subsection 6 of this section.

[6.**] 7.** The commissioner of education shall, by rule and regulation of the state board of education and with the advice of the coordinating board for higher education, establish a procedure for the reimbursement of the cost of tuition, books and fees to any public community college or **within the limits established in subsection 9 of this section any two-year public or private** vocational or technical school for any student:

(1) Who has attended a public high school in the state for at least three years immediately prior to graduation that meets the requirements of subsection 2 of this section, except that students who are active duty military dependents who, in the school year immediately preceding graduation, meet all other requirements of this subsection and are attending a school that meets the requirements of subsection 2 of this section shall be exempt from the three-year attendance requirement of this subdivision; and

(2) Who has made a good faith effort to first secure all available federal sources of funding that could be applied to the reimbursement described in this subsection; and

(3) Who has earned a minimal grade average while in high school as determined by rule of the state board of education, and other requirements for the reimbursement authorized by this subsection as determined by rule and regulation of said board.

[7.**] 8.** The commissioner of education shall develop a procedure for evaluating the effectiveness of the program described in this section. Such evaluation shall be conducted annually with the results of the evaluation provided to the governor, speaker of the house, and president pro tempore of the senate.

9. For a two-year public or private vocational or technical school to obtain reimbursements under subsection 7 of this section, except for those schools that are

receiving reimbursements on August 28, 2008, the following requirements shall be satisfied:

(1) Such two-year public or private vocational or technical school shall be a member of the North Central Association and be accredited by the Higher Learning Commission as of July 1, 2008, and maintain such accreditation;

(2) Such two-year public or private vocational or technical school shall be designated as a 501(c)(3) nonprofit organization under the Internal Revenue Code of 1986, as amended;

(3) No two-year public or private vocational or technical school shall receive tuition reimbursements in excess of the tuition rate charged by a public community college for course work offered by the private vocational or technical school within the service area of such college; and

(4) The reimbursements provided to any two-year private vocational or technical school shall not violate the provisions of article IX, section 8, or article I, section 7, of the Missouri Constitution or the first amendment of the United States Constitution.

173.256. KIDS' CHANCE SCHOLARSHIP — FUND CREATED, HOW TERMINATED, LAPSE INTO GENERAL REVENUE PROHIBITED. — 1. The department of higher education shall collect and distribute funds for the kids' chance scholarship pursuant to section 173.254, however, the department shall not distribute the corpus provided by section 173.258. **The department may distribute any accrued interest in the fund as scholarships after the second Monday in October of 2008.**

2. There is hereby created in the state treasury the "Kids' Chance Scholarship Fund", which shall consist of all moneys deposited in the fund pursuant to section 173.258 and all moneys which may be appropriated to it by the general assembly, from federal or other sources, including private donations. Upon termination of the fund, all moneys in the fund shall be transferred for the use of the division of workers' compensation for deposit in the fund created by virtue of section 287.690, RSMo.

3. The state treasurer shall administer the fund and credit all interest to the fund and the moneys in the fund shall be used solely upon appropriation by the department for the expenses of carrying out its duties pursuant to this section.

4. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of the general revenue fund at the end of the biennium.

173.258. DIRECTOR TO DEPOSIT FUNDS IN KIDS' CHANCE SCHOLARSHIP FUND, WHEN. — The director of the division of workers' compensation shall deposit fifty thousand dollars from the premium tax collected pursuant to section 287.690, RSMo, on the second Monday in October of each year beginning in 1999 until **[**2008**]** **2018** into the kids' chance scholarship fund.

Approved July 10, 2008

HB 2213 [HB 2213]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Requires the Governor to issue a proclamation annually designating the second week of September as Parent and Family Involvement in Education Week

AN ACT to amend chapter 9, RSMo, by adding thereto one new section relating to the designation of parent and family involvement in education week.

SECTION
A. Enacting clause.
9.139. Parent and Family Involvement in Education Week to be designated annually, when.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 9, RSMo, is amended by adding thereto one new section, to be known as section 9.139, to read as follows:

9.139. PARENT AND FAMILY INVOLVEMENT IN EDUCATION WEEK TO BE DESIGNATED ANNUALLY, WHEN. — The governor shall annually issue a proclamation setting apart the second week of September as "Parent and Family Involvement in Education Week", and recommending to the people of the state that the week be appropriately observed through activities that will bring about an increased awareness of the importance and benefits of parent and family involvement in education and encourage greater involvement of parents and families in their children's education, both in the school and in the home. The parent and family involvement in education week recognizes that parent and family involvement in a child's education is a major factor in determining success in school, regardless of the socio-economic status, race, or ethnic background of the family, or the education level of the parents.

Approved June 10, 2008

HB 2224 [CCS SS SCS HB 2224]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Creates the Deputy Sheriff Salary Supplementation Fund and revises continuing education requirements for peace officers

AN ACT to repeal sections 57.280, 488.435, 590.050, and 650.350, RSMo, and to enact in lieu thereof five new sections relating to the training and compensation of law enforcement officers.

SECTION
A. Enacting clause.
57.278. Deputy sheriff salary supplementation fund created, use of moneys.
57.280. Sheriff to receive charge, civil cases.
488.435. Sheriff to receive charges for civil cases.
590.050. Continuing education requirements.
650.350. Missouri sheriff methamphetamine relief taskforce created, members, compensation, meetings — MoSMART fund created — rulemaking authority.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 57.280, 488.435, 590.050, and 650.350, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 57.278, 57.280, 488.435, 590.050, and 650.350, to read as follows:

57.278. DEPUTY SHERIFF SALARY SUPPLEMENTATION FUND CREATED, USE OF MONEYS. — 1. There is hereby created in the state treasury the "Deputy Sheriff Salary Supplementation Fund", which shall consist of money collected from charges for service received by county sheriffs under subsection 4 of section 57.280. The money in the fund

shall be used solely to supplement the salaries, and employee benefits resulting from such salary increases, of county deputy sheriffs. The state treasurer shall be custodian of the fund and may approve disbursements from the fund in accordance with sections 30.170 and 30.180, RSMo. The Missouri sheriff methamphetamine relief taskforce created under section 650.350, RSMo, shall administer the fund.

2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

57.280. SHERIFF TO RECEIVE CHARGE, CIVIL CASES. — 1. Sheriffs shall receive a charge for service of any summons, writ or other order of court, in connection with any civil case, and making on the same either a return indicating service, a non est return or a nulla bona return, the sum of twenty dollars for each item to be served, except that a sheriff shall receive a charge for service of any subpoena, and making a return on the same, the sum of ten dollars; however, no such charge shall be collected in any proceeding when court costs are to be paid by the state, county or municipality. In addition to such charge, the sheriff shall be entitled to receive for each mile actually traveled in serving any summons, writ, subpoena or other order of court, the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile, provided that such mileage shall not be charged for more than one subpoena or summons or other writ served in the same cause on the same trip. All of such charges shall be received by the sheriff who is requested to perform the service. Except as otherwise provided by law, all charges made pursuant to this section shall be collected by the court clerk as court costs and are payable prior to the time the service is rendered; provided that if the amount of such charge cannot be readily determined, then the sheriff shall receive a deposit based upon the likely amount of such charge, and the balance of such charge shall be payable immediately upon ascertainment of the proper amount of said charge. A sheriff may refuse to perform any service in any action or proceeding, other than when court costs are waived as provided by law, until the charge provided by this section is paid. Failure to receive the charge shall not affect the validity of the service.

2. The sheriff shall receive for receiving and paying moneys on execution or other process, where lands or goods have been levied and advertised and sold, five percent on five hundred dollars and four percent on all sums above five hundred dollars, and half of these sums, when the money is paid to the sheriff without a levy, or where the lands or goods levied on shall not be sold and the money is paid to the sheriff or person entitled thereto, his agent or attorney. The party at whose application any writ, execution, subpoena or other process has issued from the court shall pay the sheriff's costs for the removal, transportation, storage, safekeeping and support of any property to be seized pursuant to legal process before such seizure. The sheriff shall be allowed for each mile, going and returning from the courthouse of the county in which he resides to the place where the court is held, the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile. The provisions of this subsection shall not apply to garnishment proceeds.

3. The sheriff upon the receipt of the charge herein provided for shall pay into the treasury of the county any and all charges received pursuant to the provisions of this section; however, in any county, any funds, not to exceed fifty thousand dollars in any calendar year, other than as a result of regular budget allocations or land sale proceeds, coming into the possession of the sheriff's office, such as from the sale of recovered evidence, shall be held in a fund established by the county treasurer, which may be expended at the discretion of the sheriff for the furtherance of the sheriff's set duties. Any such funds in excess of fifty thousand dollars, other than regular budget allocations or land sale proceeds, shall be placed to the credit of the general revenue fund of the county. Moneys in the fund shall be used only for the procurement of

services and equipment to support the operation of the sheriff's office. Moneys in the fund established pursuant to this subsection shall not lapse to the county general revenue fund at the end of any county budget or fiscal year.

4. Notwithstanding the provisions of subsection 3 of this section to the contrary, the sheriff shall receive ten dollars for service of any summons, writ, subpoena, or other order of the court included under subsection 1 of this section, in addition to the charge for such service that each sheriff receives under subsection 1 of this section. The money received by the sheriff under this subsection shall be paid into the county treasury and the county treasurer shall make such money payable to the state treasurer. The state treasurer shall deposit such moneys in the deputy sheriff salary supplementation fund created under section 57.278.

488.435. SHERIFF TO RECEIVE CHARGES FOR CIVIL CASES. — 1. Sheriffs shall receive a charge, as provided in section 57.280, RSMo, for service of any summons, writ or other order of court, in connection with any civil case, and making on the same either a return indicating service, a non est return or a nulla bona return, the sum of twenty dollars for each item to be served, as provided in section 57.280, RSMo, except that a sheriff shall receive a charge for service of any subpoena, and making a return on the same, the sum of ten dollars, as provided in section 57.280, RSMo; however, no such charge shall be collected in any proceeding when court costs are to be paid by the state, county or municipality. In addition to such charge, the sheriff shall be entitled, as provided in section 57.280, RSMo, to receive for each mile actually traveled in serving any summons, writ, subpoena or other order of court, the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile, provided that such mileage shall not be charged for more than one subpoena or summons or other writ served in the same cause on the same trip. All of such charges shall be received by the sheriff who is requested to perform the service. Except as otherwise provided by law, all charges made pursuant to section 57.280, RSMo, shall be collected by the court clerk as court costs and are payable prior to the time the service is rendered; provided that if the amount of such charge cannot be readily determined, then the sheriff shall receive a deposit based upon the likely amount of such charge, and the balance of such charge shall be payable immediately upon ascertainment of the proper amount of such charge. A sheriff may refuse to perform any service in any action or proceeding, other than when court costs are waived as provided by law, until the charge provided by this section is paid. Failure to receive the charge shall not affect the validity of the service.

2. The sheriff shall, as provided in section 57.280, RSMo, receive for receiving and paying moneys on execution or other process, where lands or goods have been levied and advertised and sold, five percent on five hundred dollars and four percent on all sums above five hundred dollars, and half of these sums, when the money is paid to the sheriff without a levy, or where the lands or goods levied on shall not be sold and the money is paid to the sheriff or person entitled thereto, his or her agent or attorney. The party at whose application any writ, execution, subpoena or other process has issued from the court shall pay the sheriff's costs, as provided in section 57.280, RSMo, for the removal, transportation, storage, safekeeping and support of any property to be seized pursuant to legal process before such seizure. The sheriff shall be allowed for each mile, as provided in section 57.280, RSMo, going and returning from the courthouse of the county in which he or she resides to the place where the court is held, the rate prescribed by the Internal Revenue Service for all allowable expenses for motor vehicle use expressed as an amount per mile. The provisions of this subsection shall not apply to garnishment proceeds.

3. As provided in subsection 4 of section 57.280, RSMo, the sheriff shall receive ten dollars for service of any summons, writ, subpoena, or other order of the court included under subsection 1 of such section, in addition to the charge for such service that each sheriff receives under subsection 1 of such section. The money received by the sheriff under subsection 4 of section 57.280, RSMo, shall be paid into the county treasury and the

county treasurer shall make such money payable to the state treasurer. The state treasurer shall deposit such moneys in the deputy sheriff salary supplementation fund created under section 57.278, RSMo.

590.050. CONTINUING EDUCATION REQUIREMENTS. — 1. The POST commission shall establish requirements for the continuing education of all peace officers. Peace officers who make traffic stops shall be required to receive **[**annual training**]** **three hours of training within the law enforcement continuing education three-year reporting period** concerning the prohibition against racial profiling and such training shall promote understanding and respect for racial and cultural differences and the use of effective, noncombative methods for carrying out law enforcement duties in a racially and culturally diverse environment.

2. The director shall license continuing education providers and may probate, suspend and revoke such licenses upon written notice stating the reasons for such action. Any person aggrieved by a decision of the director pursuant to this subsection may appeal as provided in chapter 536, RSMo.

3. The costs of continuing law enforcement education shall be reimbursed in part by moneys from the peace officer standards and training commission fund created in section 590.178, subject to availability of funds, except that no such funds shall be used for the training of any person not actively commissioned or employed by a county or municipal law enforcement agency.

4. The director may engage in any activity intended to further the professionalism of peace officers through training and education, including the provision of specialized training through the department of public safety.

650.350. MISSOURI SHERIFF METHAMPHETAMINE RELIEF TASKFORCE CREATED, MEMBERS, COMPENSATION, MEETINGS — MOSMART FUND CREATED — RULEMAKING AUTHORITY. — 1. There is hereby created within the department of public safety the "Missouri Sheriff Methamphetamine Relief Taskforce" (MoSMART). MoSMART shall be composed of five sitting sheriffs. Every two years, the Missouri Sheriffs' Association board of directors will submit twenty names of sitting sheriffs to the governor. The governor shall appoint five members from the list of twenty names, having no more than three from any one political party, to serve a term of two years on MoSMART. The members shall elect a chair from among their membership. Members shall receive no compensation for the performance of their duties pursuant to this section, but each member shall be reimbursed from the MoSMART fund for actual and necessary expenses incurred in carrying out duties pursuant to this section.

2. MoSMART shall meet no less than twice each calendar year with additional meetings called by the chair upon the request of at least two members. A majority of the appointed members shall constitute a quorum.

3. A special fund is hereby created in the state treasury to be **[**know**]** **known** as the "MoSMART Fund". The state treasurer shall invest the moneys in such fund in the manner authorized by law. All moneys received for MoSMART from interest, state, and federal moneys shall be deposited to the credit of the fund. The director of the department of public safety shall distribute at least fifty percent but not more than one hundred percent of the fund annually in the form of grants approved by MoSMART.

4. **Except for money deposited into the deputy sheriff salary supplementation fund created under section 57.278, RSMo,** all moneys appropriated to or received by MoSMART shall be deposited and credited to the MoSMART fund. The department of public safety shall only be reimbursed for actual and necessary expenses for the administration of MoSMART, which shall be no less than one percent and which shall not exceed two percent of all moneys appropriated to the fund**, except that the department shall not receive any amount of the money deposited into the deputy sheriff salary supplementation fund for administrative**

purposes. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the MoSMART fund shall not lapse to general revenue at the end of the biennium.

5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

6. Any county law enforcement entity or established task force with a memorandum of understanding and protocol may apply for grants from the MoSMART fund on an application to be developed by the department of public safety with the approval of MoSMART. All applications shall be evaluated by MoSMART and approved or denied based upon the level of funding designated for methamphetamine enforcement before 1997 and upon current need and circumstances. No applicant shall receive a MoSMART grant in excess of one hundred thousand dollars per year. The department of public safety shall monitor all MoSMART grants.

7. MoSMART's anti-methamphetamine funding priorities are as follows:

(1) Sheriffs who are participating in coordinated multijurisdictional task forces and have their task forces apply for funding;

(2) Sheriffs whose county has been designated HIDTA counties, yet have received no HIDTA or narcotics assistance program funding; and

(3) Sheriffs without HIDTA designations or task forces, whose application justifies the need for MoSMART funds to eliminate methamphetamine labs.

8. MoSMART shall administer the deputy sheriff salary supplementation fund as provided under section 57.278, RSMo.

Approved June 26, 2008

HB 2233 [HB 2233]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Prohibits an employee or official of any political subdivision from seeking a political appointment in exchange for anything of value to any political subdivision

AN ACT to repeal section 105.452, RSMo, and to enact in lieu thereof one new section relating to prohibited acts by public officials and employees.

SECTION
A. Enacting clause.
105.452. Prohibited acts by elected and appointed public officials and employees.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 105.452, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.452, to read as follows:

105.452. PROHIBITED ACTS BY ELECTED AND APPOINTED PUBLIC OFFICIALS AND EMPLOYEES. — 1. No elected or appointed official or employee of the state or any political subdivision thereof shall:

(1) Act or refrain from acting in any capacity in which he is lawfully empowered to act as such an official or employee by reason of any payment, offer to pay, promise to pay, or receipt of anything of actual pecuniary value paid or payable, or received or receivable, to himself or any third person, including any gift or campaign contribution, made or received in relationship to or as a condition of the performance of an official act, other than compensation to be paid by the state or political subdivision; or

(2) Use confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself, his spouse, his dependent child in his custody, or any business with which he is associated;

(3) Disclose confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself or any other person;

(4) Favorably act on any matter that is so specifically designed so as to provide a special monetary benefit to such official or his spouse or dependent children, including but not limited to increases in retirement benefits, whether received from the state of Missouri or any third party by reason of such act. For the purposes of this subdivision, "special monetary benefit" means being materially affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected. In all such matters such officials must recuse themselves from acting **[**and shall not be relieved by reason of the provisions of section 105.460**]**, except that such official may act on increases in compensation subject to the restrictions of section 13 of article VII of the Missouri Constitution; or

(5) Use his decision-making authority for the purpose of obtaining a financial gain which materially enriches himself, his spouse or dependent children by acting or refraining from acting for the purpose of coercing or extorting from another anything of actual pecuniary value.

2. No elected or appointed official or employee of any political subdivision shall offer, promote, or advocate for a political appointment in exchange for anything of value to any political subdivision.

Approved June 25, 2008

HB 2360 [HCS HB 2360]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Designates a portion of State Highway 169 in Gentry County as the "Mo. Hwy. Patrol Corporal Henry C. Bruns Memorial Highway"

AN ACT to amend chapter 227, RSMo, by adding thereto one new section relating to a memorial highway designation.

SECTION

A. Enacting clause.

227.398. Mo. Hwy. Patrol Corporal Henry C. Bruns Memorial Highway designated for a portion of Highway 169 in Gentry County.

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 227, RSMo, is amended by adding thereto one new section, to be known as section 227.398, to read as follows:

227.398. MO. HWY. PATROL CORPORAL HENRY C. BRUNS MEMORIAL HIGHWAY DESIGNATED FOR A PORTION OF HIGHWAY 169 IN GENTRY COUNTY. — The portion of Highway 169 in Gentry County from the city limits of King City south one mile shall be designated the "Mo. Hwy. Patrol Corporal Henry C. Bruns Memorial Highway". Costs for such designation shall be paid by private donation.

Approved June 17, 2008

HB 2393 [SS SCS HCS HB 2393]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

Authorizes a tax credit for mega-projects in enhanced enterprise zones

AN ACT to repeal sections 135.950 and 135.967, RSMo, and to enact in lieu thereof three new sections relating to enhanced enterprise zones.

SECTION

Be it enacted by the General Assembly of the state of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 135.950 and 135.967, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 135.950, 135.967, and 135.968, to read as follows:

135.950. DEFINITIONS. — The following terms, whenever used in sections 135.950 to 135.970 mean:

(1) "Average wage", the new payroll divided by the number of new jobs;

[(1)**]** **(2)** "Blighted area", an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use;

[(2)**]** **(3)** "Board", an enhanced enterprise zone board established pursuant to section 135.957;

[(3)**]** **(4)** "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the new business facility is first put into use by the taxpayer in the enhanced business enterprise in which the taxpayer intends to use the new business facility;

(5) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least

annually. Notwithstanding the provisions of this subdivision to the contrary, for any taxpayer that in conjunction with their project is relocating employees from a Missouri county with a higher county average wage, such taxpayer shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated;

[(4)**] (6)** "Department", the department of economic development;

[(5)**] (7)** "Director", the director of the department of economic development;

[(6)**] (8)** "Employee", a person employed by the enhanced business enterprise that is scheduled to work an average of at least one thousand hours per year, and such person at all times has health insurance offered to him or her, which is partially paid for by the employer;

[(7)**] (9)** "Enhanced business enterprise", an industry or one of a cluster of industries that is either:

(a) Identified by the department as critical to the state's economic security and growth; or

(b) Will have an impact on industry cluster development, as identified by the governing authority in its application for designation of an enhanced enterprise zone and approved by the department; but excluding gambling establishments (NAICS industry group 7132), retail trade (NAICS sectors 44 and 45), educational services (NAICS sector 61), religious organizations (NAICS industry group 8131), public administration (NAICS sector 92), and food and drinking places (NAICS subsector 722), however, notwithstanding provisions of this section to the contrary, headquarters or administrative offices of an otherwise excluded business may qualify for benefits if the offices serve a multistate territory. In the event a national, state, or regional headquarters operation is not the predominant activity of a project facility, the new jobs and investment of such headquarters operation is considered eligible for benefits under this section if the other requirements are satisfied. Service industries may be eligible only if a majority of its annual revenues will be derived from out of the state;

[(8)**] (10)** "Existing business facility", any facility in this state which was employed by the taxpayer claiming the credit in the operation of an enhanced business enterprise immediately prior to an expansion, acquisition, addition, or replacement;

[(9)**] (11)** "Facility", any building used as an enhanced business enterprise located within an enhanced enterprise zone, including the land on which the facility is located and all machinery, equipment, and other real and depreciable tangible personal property acquired for use at and located at or within such facility and used in connection with the operation of such facility;

[(10)**] (12)** "Facility base employment", the greater of the number of employees located at the facility on the date of the notice of intent, or for the twelve-month period prior to the date of the notice of intent, the average number of employees located at the facility, or in the event the project facility has not been in operation for a full twelve-month period, the average number of employees for the number of months the facility has been in operation prior to the date of the notice of intent;

[(11)**] (13)** "Facility base payroll", the total amount of taxable wages paid by the enhanced business enterprise to employees of the enhanced business enterprise located at the facility in the twelve months prior to the notice of intent, not including the payroll of owners of the enhanced business enterprise unless the enhanced business enterprise is participating in an employee stock ownership plan. For the purposes of calculating the benefits under this program, the amount of base payroll shall increase each year based on the consumer price index or other comparable measure, as determined by the department;

[(12)**] (14)** "Governing authority", the body holding primary legislative authority over a county or incorporated municipality;

[(13)**] (15) "Mega-project", any manufacturing or assembling facility, approved by the department for construction and operation within an enhanced enterprise zone, which satisfies the following:**

(a) The new capital investment is projected to exceed three hundred million dollars over a period of eight years from the date of approval by the department;

(b) The number of new jobs is projected to exceed one thousand over a period of eight years beginning on the date of approval by the department;

(c) The average wage of new jobs to be created shall exceed the county average wage;

(d) The taxpayer shall offer health insurance to all new jobs and pay at least eighty percent of such insurance premiums; and

(e) An acceptable plan of repayment, to the state, of the tax credits provided for the mega-project has been provided by the taxpayer;

(16) "NAICS", the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group or industry identified in this section shall include its corresponding classification in subsequent federal industry classification systems;

[(14)**] (17)** "New business facility", a facility that satisfies the following requirements:

(a) Such facility is employed by the taxpayer in the operation of an enhanced business enterprise. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of an enhanced business enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of an enhanced business enterprise, the portion employed by the taxpayer in the operation of an enhanced business enterprise shall be considered a new business facility, if the requirements of paragraphs (b), (c), and (d) of this subdivision are satisfied;

(b) Such facility is acquired by, or leased to, the taxpayer after December 31, 2004. A facility shall be deemed to have been acquired by, or leased to, the taxpayer after December 31, 2004, if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer, or the commencement of the term of the lease to the taxpayer occurs after December 31, 2004;

(c) If such facility was acquired by the taxpayer from another taxpayer and such facility was employed immediately prior to the acquisition by another taxpayer in the operation of an enhanced business enterprise, the operation of the same or a substantially similar enhanced business enterprise is not continued by the taxpayer at such facility; and

(d) Such facility is not a replacement business facility, as defined in subdivision **[**(22)**] (25)** of this section;

[(15)**] (18)** "New business facility employee", an employee of the taxpayer in the operation of a new business facility during the taxable year for which the credit allowed by section 135.967 is claimed, except that truck drivers and rail and barge vehicle operators and other operators of rolling stock for hire shall not constitute new business facility employees;

[(16)**] (19)** "New business facility investment", the value of real and depreciable tangible personal property, acquired by the taxpayer as part of the new business facility, which is used by the taxpayer in the operation of the new business facility, during the taxable year for which the credit allowed by 135.967 is claimed, except that trucks, truck-trailers, truck semitrailers, rail vehicles, barge vehicles, aircraft and other rolling stock for hire, track, switches, barges, bridges, tunnels, and rail yards and spurs shall not constitute new business facility investments. The total value of such property during such taxable year shall be:

(a) Its original cost if owned by the taxpayer; or

(b) Eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the new business facility is in operation for less than an entire taxable year, the new business facility investment shall be determined by dividing the sum of the

total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the new business facility was in operation by the number of full calendar months during such period;

[(17)**] (20)** "New job", the number of employees located at the facility that exceeds the facility base employment less any decrease in the number of the employees at related facilities below the related facility base employment. No job that was created prior to the date of the notice of intent shall be deemed a new job;

[(18)**] (21)** "Notice of intent", a form developed by the department which is completed by the enhanced business enterprise and submitted to the department which states the enhanced business enterprise's intent to hire new jobs and request benefits under such program;

[(19)**] (22)** "Related facility", a facility operated by the enhanced business enterprise or a related company in this state that is directly related to the operation of the project facility;

[(20)**] (23)** "Related facility base employment", the greater of:

(a) The number of employees located at all related facilities on the date of the notice of intent; or

(b) For the twelve-month period prior to the date of the notice of intent, the average number of employees located at all related facilities of the enhanced business enterprise or a related company located in this state;

[(21)**] (24)** "Related taxpayer":

(a) A corporation, partnership, trust, or association controlled by the taxpayer;

(b) An individual, corporation, partnership, trust, or association in control of the taxpayer; or

(c) A corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer. "Control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote, "control of a partnership or association" shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association, and "control of a trust" shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust; ownership shall be determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

[(22)**] (25)** "Replacement business facility", a facility otherwise described in subdivision **[**(14)**] (17)** of this section, hereafter referred to in this subdivision as "new facility", which replaces another facility, hereafter referred to in this subdivision as "old facility", located within the state, which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first taxable year for which the credit allowed by this section is claimed. A new facility shall be deemed to replace an old facility if the following conditions are met:

(a) The old facility was operated by the taxpayer or a related taxpayer during the taxpayer's or related taxpayer's taxable period immediately preceding the taxable year in which commencement of commercial operations occurs at the new facility; and

(b) The old facility was employed by the taxpayer or a related taxpayer in the operation of an enhanced business enterprise and the taxpayer continues the operation of the same or substantially similar enhanced business enterprise at the new facility.

Notwithstanding the preceding provisions of this subdivision, a facility shall not be considered a replacement business facility if the taxpayer's new business facility investment, as computed in subdivision **[**(16)**] (19)** of this section, in the new facility during the tax period for which the credits allowed in section 135.967 are claimed exceed one million dollars and if the total number of employees at the new facility exceeds the total number of employees at the old facility by at least two;

[(23)**] (26)** "Same or substantially similar enhanced business enterprise", an enhanced business enterprise in which the nature of the products produced or sold, or activities conducted,

are similar in character and use or are produced, sold, performed, or conducted in the same or similar manner as in another enhanced business enterprise.

135.967. TAX CREDIT ALLOWED, DURATION — PROHIBITION ON RECEIVING OTHER TAX CREDITS — LIMITATIONS ON ISSUANCE OF TAX CREDITS — CAP — ELIGIBILITY OF CERTAIN EXPANSIONS — EMPLOYEE CALCULATIONS — COMPUTATION OF CREDIT — FLOW-THROUGH TAX TREATMENTS — CREDITS MAY BE CLAIMED, WHEN — CERTIFICATES — REFUNDS — VERIFICATION PROCEDURES. — 1. A taxpayer who establishes a new business facility may, upon approval by the department, be allowed a credit, each tax year for up to ten tax years, in an amount determined as set forth in this section, against the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo. No taxpayer shall receive multiple ten-year periods for subsequent expansions at the same facility.

2. Notwithstanding any provision of law to the contrary, any taxpayer who establishes a new business facility in an enhanced enterprise zone and is awarded state tax credits under this section may not also receive tax credits under sections 135.100 to 135.150, sections 135.200 to **[**135.268**]** **135.286**, or section 135.535**, and may not simultaneously receive tax credits under sections 620.1875 to 620.1890, RSMo, at the same facility**.

3. No credit shall be issued pursuant to this section unless:

(1) The number of new business facility employees engaged or maintained in employment at the new business facility for the taxable year for which the credit is claimed equals or exceeds two; and

(2) The new business facility investment for the taxable year for which the credit is claimed equals or exceeds one hundred thousand dollars.

4. The annual amount of credits allowed for an approved enhanced business enterprise shall be the lesser of:

(1) The annual amount authorized by the department for the enhanced business enterprise, which shall be limited to the projected state economic benefit, as determined by the department; or

(2) The sum calculated based upon the following:

(a) A credit of four hundred dollars for each new business facility employee employed within an enhanced enterprise zone;

(b) An additional credit of four hundred dollars for each new business facility employee who is a resident of an enhanced enterprise zone;

(c) An additional credit of four hundred dollars for each new business facility employee who is paid by the enhanced business enterprise a wage that exceeds the average wage paid within the county in which the facility is located, as determined by the department; and

(d) A credit equal to two percent of new business facility investment within an enhanced enterprise zone.

5. Prior to January 1, 2007, in no event shall the department authorize more than four million dollars annually to be issued for all enhanced business enterprises. After December 31, 2006, in no event shall the department authorize more than fourteen million dollars annually to be issued for all enhanced business enterprises.

6. If a facility, which does not constitute a new business facility, is expanded by the taxpayer, the expansion shall be considered eligible for the credit allowed by this section if:

(1) The taxpayer's new business facility investment in the expansion during the tax period in which the credits allowed in this section are claimed exceeds one hundred thousand dollars and if the number of new business facility employees engaged or maintained in employment at the expansion facility for the taxable year for which credit is claimed equals or exceeds two, and the total number of employees at the facility after the expansion is at least two greater than the total number of employees before the expansion; and

(2) The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in subdivision **[**(14)**]** **(19)** of section 135.950.

7. The number of new business facility employees during any taxable year shall be determined by dividing by twelve the sum of the number of individuals employed on the last business day of each month of such taxable year. If the new business facility is in operation for less than the entire taxable year, the number of new business facility employees shall be determined by dividing the sum of the number of individuals employed on the last business day of each full calendar month during the portion of such taxable year during which the new business facility was in operation by the number of full calendar months during such period. For the purpose of computing the credit allowed by this section in the case of a facility which qualifies as a new business facility under subsection 6 of this section, and in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision **[**(14)**]** **(17)** of section 135.950, or subdivision **[**(22)**]** **(25)** of section 135.950, the number of new business facility employees at such facility shall be reduced by the average number of individuals employed, computed as provided in this subsection, at the facility during the taxable year immediately preceding the taxable year in which such expansion, acquisition, or replacement occurred and shall further be reduced by the number of individuals employed by the taxpayer or related taxpayer that was subsequently transferred to the new business facility from another Missouri facility and for which credits authorized in this section are not being earned, whether such credits are earned because of an expansion, acquisition, relocation, or the establishment of a new facility.

8. In the case where a new business facility employee who is a resident of an enhanced enterprise zone for less than a twelve-month period is employed for less than a twelve-month period, the credits allowed by paragraph (b) of subdivision (2) of subsection 4 of this section shall be determined by multiplying four hundred dollars by a fraction, the numerator of which is the number of calendar days during the taxpayer's tax year for which such credits are claimed, in which the employee was a resident of an enhanced enterprise zone, and the denominator of which is three hundred sixty-five.

9. For the purpose of computing the credit allowed by this section in the case of a facility which qualifies as a new business facility pursuant to subsection 6 of this section, and in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision **[**(14)**]** **(17)** of section 135.950 or subdivision **[**(22)**]** **(25)** of section 135.950, the amount of the taxpayer's new business facility investment in such facility shall be reduced by the average amount, computed as provided in subdivision **[**(14)**]** **(19)** of section 135.950 for new business facility investment, of the investment of the taxpayer, or related taxpayer immediately preceding such expansion or replacement or at the time of acquisition. Furthermore, the amount of the taxpayer's new business facility investment shall also be reduced by the amount of investment employed by the taxpayer or related taxpayer which was subsequently transferred to the new business facility from another Missouri facility and for which credits authorized in this section are not being earned, whether such credits are earned because of an expansion, acquisition, relocation, or the establishment of a new facility.

10. For a taxpayer with flow-through tax treatment to its members, partners, or shareholders, the credit shall be allowed to members, partners, or shareholders in proportion to their share of ownership on the last day of the taxpayer's tax period.

11. Credits may not be carried forward but shall be claimed for the taxable year during which commencement of commercial operations occurs at such new business facility, and for each of the nine succeeding taxable years for which the credit is issued.

12. Certificates of tax credit authorized by this section may be transferred, sold, or assigned by filing a notarized endorsement thereof with the department that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the department. The sale price cannot be less than seventy-five percent of the par value of such credits.

13. The director of revenue shall issue a refund to the taxpayer to the extent that the amount of credits allowed in this section exceeds the amount of the taxpayer's income tax.

14. Prior to the issuance of tax credits, the department shall verify through the department of revenue, or any other state department, that the tax credit applicant does not owe any delinquent income, sales, or use tax or interest or penalties on such taxes, or any delinquent fees or assessments levied by any state department and through the department of insurance that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that the amount of credits issued shall be reduced by the applicant's tax delinquency. If the department of revenue or the department of insurance, or any other state department, concludes that a taxpayer is delinquent after June fifteenth but before July first of any year and the application of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the deficiency in which interest, penalties, and additions to tax shall be tolled. After applying all available credits toward a tax delinquency, the administering agency shall notify the appropriate department, and that department shall update the amount of outstanding delinquent tax owed by the applicant. If any credits remain after satisfying all insurance, income, sales, and use tax delinquencies, the remaining credits shall be issued to the applicant, subject to the restrictions of other provisions of law.

135.968. MEGAPROJECTS, TAX CREDIT AUTHORIZED, ELIGIBILITY — DEPARTMENT DUTIES — BINDING CONTRACT REQUIRED, WHEN — ISSUANCE OF CREDITS, PROCEDURE. — 1. A taxpayer who establishes a mega-project, approved by the department, within an enhanced enterprise zone shall, in exchange for the consideration provided by new tax revenues and other economic stimuli that will be generated from the new jobs created by the mega-project, be allowed an income tax credit equal to the percentage of actual new annual payroll of the taxpayer attributable to employees directly related to the manufacturing and assembly process and administration, as provided under subsection 4 of this section. A taxpayer seeking approval of a mega-project shall submit an application to the department. The department shall not approve any mega-project after December 31, 2008. The department shall not approve any credits for mega-projects to be issued prior to January 1, 2013, and in no event shall the department authorize more than forty million dollars to be issued annually for all mega-projects. The total amount of credits issued under this section shall not exceed two hundred forty million dollars.

2. In considering applications for approval of mega-projects, the department may approve an application if:

(1) The taxpayer's project is financially sound and the taxpayer has adequately demonstrated an ability to successfully undertake and complete the mega-project. This determination shall be supported by a professional third party market feasibility analysis conducted on behalf of the state by a firm with direct experience with the industry of the proposed mega-project, and by a professional third party financial analysis of the taxpayer's ability to complete the project;

(2) The taxpayer's plan of repayment to the state of the amount of tax credits provided is reasonable and sound;

(3) The taxpayer's mega-project will create new jobs that were not jobs previously performed by employees of the taxpayer or a related taxpayer in Missouri;

(4) Local taxing entities are providing a significant level of incentives for the mega-project relative to the projected new local tax revenues created by the mega-project;

(5) There is at least one other state or foreign country that the taxpayer verifies is being considered for the project, and receiving mega-project tax credits is a major factor in the taxpayer's decision to go forward with the project and not receiving the credit will result in the taxpayer not creating new jobs in Missouri;

(6) The mega-project will be located in an enhanced enterprise zone which constitutes an economic or social liability and a detriment to the public health, safety, morals, or welfare in its present condition and use;

(7) The completion of the mega-project will serve an essential public municipal purpose by creating a substantial number of new jobs for citizens, increasing their purchasing power, improving their living conditions, and relieving the demand for unemployment and welfare assistance thereby promoting the economic development of the enhanced enterprise zone, the municipality, and the state; and

(8) The creation of new jobs will assist the state in providing the services needed to protect the health, safety, and social and economic well-being of the citizens of the state.

3. Prior to final approval of an application, a binding contract shall be executed between the taxpayer and the department of economic development which shall include, but not be limited to:

(1) A repayment plan providing for cash payment to the state general revenue fund which shall result in a positive internal rate of return to the state and fully comply with the provisions of the World Trade Organization Agreement on Subsidies and Countervailing Measures. The rate of return shall be commercially reasonable and, over the life of the project, exceed one hundred and fifty percent of the state's borrowing costs based on the AAA-rated twenty-year tax exempt bond rate average over a twenty-year borrowing period. The rate shall be verified by a professional third-party financial analysis;

(2) The taxpayer's obligation to construct a facility of at least one million square feet within five years from the date of approval;

(3) A requirement that the issuance of tax credits authorized under this section shall cease and the taxpayer shall immediately submit payment, to the state general revenue fund, in an amount equal to all credits previously issued less any amounts previously repaid, increased by an additional amount that shall provide the state a reasonable rate of return, in the event the taxpayer:

(a) Fails to construct a facility of at least one million square feet within five years of the date of approval;

(b) Fails to make a scheduled payment as required by the repayment plan; or

(c) Fails to compensate new jobs at rate equal to or in excess of the county average wage or fails to offer health insurance to all such new jobs and pay at least eighty percent of such premiums; and

(4) A requirement that the department shall suspend issuance of tax credits authorized under this section if, at any point, the total amount of tax credits issued less the total amount of repayments received equals one hundred and fifty-five million dollars.

4. Upon approval of an application by the department, tax credits shall be issued annually for a period not to exceed eight years from the commencement of commercial operations of the mega-project. The eight-year period for the issuance of mega-project tax credits may extend beyond the expiration of the enhanced enterprise zone. The maximum percentage of the annual payroll of the taxpayer for new jobs located at the mega-project which may be approved or issued by the department for tax credits shall not exceed:

(1) Eighty percent for the first three years that tax credits will be issued for the mega-project;

(2) Sixty percent for the next two subsequent years;

(3) Fifty percent for the next two subsequent years; and

(4) Thirty percent for the remaining year.

In no event shall the department issue more than forty million dollars annually in mega-project tax credits to any taxpayer. In any given year, the amount of tax credits issued shall be the lesser of forty million dollars, the applicable annual payroll percentage, or the amount of tax credits remaining unissued under the two hundred and forty million dollar limitation on mega-project tax credit issuance provided under subsection 1 of this section.

5. Tax credits issued under this section may be claimed against the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo. For taxpayers with flow-through tax treatment of its members, partners, or shareholders, the credit shall be allowed to members, partners, or shareholders in proportion to their share of ownership on the last day of the taxpayer's tax period. The director of revenue shall issue a refund to a taxpayer to the extent the amount of credits allowed in this section exceeds the amount of the taxpayer's income tax liability in the year redemption is authorized. An owner of tax credits issued under this section shall not be required to have any Missouri income tax liability in order to redeem such tax credits and receive a refund. The director of revenue shall prepare a form to permit the owner of such tax credits to obtain a refund.

6. Certificates of tax credits authorized under this section may be transferred, sold, or assigned by filing a notarized endorsement thereof with the department that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the department. Upon such transfer, sale, or assignment, the transferee shall be the owner of such tax credits entitled to claim the tax credits or any refunds with respect thereto issued to the taxpayer. Tax credits may not be carried forward past the year of issuance. Tax credits authorized by this section may not be pledged or used to secure any bonds or other indebtedness issued by the state or any political subdivision of the state. Once such tax credits have been issued, nothing shall prohibit the owner of the tax credits from pledging the tax credits to any lender or other third-party.

7. Any taxpayer issued tax credits under this section shall provide an annual report to the department and the house and senate appropriations committees of the number of new jobs located at the mega-project, the new annual payroll of such new jobs, and such other information as may be required by the department to document the basis for benefits under this section. The department may withhold the approval of the annual issuance of any tax credits until it is satisfied that proper documentation has been provided, and shall reduce the tax credits to reflect any reduction in new payroll. If the department determines the average wage is below the county average wage, or the taxpayer has not maintained employee health insurance as required, the taxpayer shall not receive tax credits for that year.

8. Notwithstanding any provision of law to the contrary, any taxpayer who is awarded tax credits under this section shall not also receive tax credits under sections 135.100 to 135.150, sections 135.200 to 135.286, section 135.535, or sections 620.1875 to 620.1890, RSMo.

9. Any action brought in any court contesting the approval of a mega-project and the issuance of the tax credits, or any other action undertaken pursuant to this section related to such mega-project, shall be filed within ninety days following approval of the mega-project by the department.

10. Records and documents relating to a proposed mega-project shall be deemed closed records until such time as the application has been approved. Provisions of this subsection to the contrary notwithstanding, records containing business plan information which may endanger the competitiveness of the business shall remain closed.

11. Notwithstanding any provision of this section to the contrary, no taxpayer who receives mega-project tax credits authorized under this section or any related taxpayer shall employ, prior to January 1, 2022, directly:

(1) Any elected public official of this state holding office as of January 1, 2008;

(2) Any director, deputy director, division director, or employee directly involved in negotiations between the department of economic development and a taxpayer relative to the mega-project who was employed as of January 1, 2008, by the department.

Approved May 22, 2008